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Counsel for Ironshore Specialty Insurance Company,
formerly known as TIG Specialty Insurance Company

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: PURDUE PHARMA L.P., *et al.*,[1] Debtors.	Chapter 11 **Case No. 19-23649-rdd** **(Jointly Administered)**

DECLARATION OF GEORGE CALHOUN IN SUPPORT OF SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY

I, George R. Calhoun, V, hereby declare as follows:

1. I am a partner with Ifrah PLLC and represent Ironshore Specialty Insurance Company, formerly known as TIG Specialty Insurance Company ("TIG") in the above-captioned

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's registration number in the applicable jurisdiction, are as follows: Purdue Pharma L.P. (7484), Purdue Pharma Inc. (7486), Purdue Transdermal Technologies L.P. (1868), Purdue Pharma Manufacturing L.P. (3821), Purdue Pharmaceuticals L.P. (0034), Imbrium Therapeutics L.P. (8810), Adlon Therapeutics L.P. (6745), Greenfield BioVentures L.P. (6150), Seven Seas Hill Corp. (4591), Ophir Green Corp. (4594), Purdue Pharma of Puerto Rico (3925), Avrio Health L.P. (4140), Purdue Pharmaceutical Products L.P. (3902), Purdue Neuroscience Company (4712), Nayatt Cove Lifescience Inc. (7805), Button Land L.P. (7502), Rhodes Associates L.P. (N/A), Paul Land Inc. (7425), Quidnic Land L.P. (7584), Rhodes Pharmaceuticals L.P. (6166), Rhodes Technologies (7143), UDF LP (0495), SVC Pharma LP (5717) and SVC Pharma Inc. (4014). The Debtors' corporate headquarters is located at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901.

action. I am providing this Declaration in support of TIG's Supplemental Brief in Support of its Motion for Relief from the Automatic Stay.

2. A true and accurate copy of a letter dated July 30, 2020, from Debtors' counsel to TIG's counsel is attached hereto as Exhibit A.

3. A true and accurate copy of a letter dated October 2, 2020, from Debtors' counsel to TIG's counsel is attached hereto as Exhibit B.

4. A true and accurate copy of the transcript for the January 20, 2021, hearing before this court is attached hereto as Exhibit C.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2021.

/s/ George R. Calhoun
George R. Calhoun, V
george@ifrahlaw.com

Exhibit A

ReedSmith
Driving progress through partnership
Ann Kramer
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Email: AKramer@ReedSmith.com

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599 Lexington Avenue
New York, NY 10022-7650
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reedsmith.com

July 30, 2020

USPS Priority Mail Express & E-mail:
Kathleen_DAndraia@trg.com
newnotices@trg.com

Claims Department
Ironshore Specialty Insurance Company
28 Liberty Street, 4th Floor
New York, NY 10005

Re: Insurance policies issued to Purdue Pharma L.P. and associated entities (collectively, "Purdue") by Ironshore Specialty Insurance Company formerly known as TIG Specialty Insurance Company ("TIG")

Dear Sir or Ma'am:

As TIG is aware, Purdue has been named in numerous lawsuits, claims, subpoenas, and civil investigative demands (collectively, "claims") in connection with the nationwide opioid crisis, including with regard to opioid drugs manufactured, marketed, and sold by Purdue and others. Certain of Purdue's officers, directors, and employees also have been named in various proceedings in connection with the opioid crisis, may be named in additional proceedings, and face substantial liabilities in connection with these matters.

As of September 2019, Purdue and its officers, directors, and employees had been named in over 2,600 such claims across the United States, its territories, and Canada, brought by individuals, other private parties, and governmental entities. On September 16, 2019, Purdue filed for chapter 11 bankruptcy protection in response to these claims, and the bankruptcy process has been proceeding apace.

On March 4, 2020, United States Bankruptcy Judge Robert D. Drain ordered Purdue and creditor groups representing opioid claimants to mediate regarding how Purdue's assets would be allocated in a plan of reorganization. *See* Order Appointing Mediators, *In re Purdue Pharma L.P., et al.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.), Docket no. 895.[1] Judge Drain appointed the Honorable Layn Phillips and Mr. Kenneth Feinberg to serve as co-mediators. The Bankruptcy Court established July 30 as the "bar date" for any and all potential creditors of Purdue to file "proofs of claim" asserting their right to a portion of Purdue's assets. As of the evening of July 29, 2020, according to Prime Clerk, there have

[1] The creditor groups that are parties to the mediation include the following: the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants; the Ad Hoc Group of Non-Consenting States; the Multi-State Governmental Entities Group; the Official Committee of Unsecured Creditors; the Ad Hoc Committee of NAS Babies; the Ad Hoc Group of Hospitals; the Ad Hoc Group of Individual Victims; counsel for the Blue Cross Blue Shield Association, various third-party payors, and health insurance carrier plaintiffs; and the group of individual health insurance purchasers, represented by Stevens & Lee. P.C. *See id.* ¶ 4.

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been approximately 82,000 "proofs of claim" filed. Additional proofs of claim will continue to be filed through the deadline.

It is likely that Purdue's bankruptcy proceedings will result in the creation of an entity that will receive Purdue's assets, including proceeds of insurance sold to Purdue, and will distribute those assets to Purdue's creditors. In that regard, and as we are sure you are aware based on publicly available information, Purdue's creditors' demands exceed, by orders of magnitude, the limits of liability of Purdue's insurance policies.

Purdue purchased a variety of insurance policies for many years from TIG that provide substantial coverage for liabilities that now are the subject of Purdue's bankruptcy proceeding. Purdue previously has provided TIG with notice of claims, circumstances, or occurrences regarding these matters, and, as noted above, TIG also doubtless has seen extensive reporting of these claims in the press. For the avoidance of doubt, Purdue hereby confirms notice of these claims, circumstances, and occurrences under all of the policies and policy years in the attached list. *See* Schedule of Insurance Policies attached as Exhibit A. Purdue is seeking coverage with respect to all of its opioid-related liabilities under all of the policies and policy years in the attached list, as well as under all other policies issued or subscribed by TIG or any related insurer that provide or potentially provide coverage for Purdue's opioid-related liabilities (collectively, the "Policies").

We would like to discuss the resolution of TIG's obligations under the Policies. To ensure that we can make substantive progress, the process we envision would include representatives of the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants, the Official Committee of Unsecured Creditors, and Purdue, as well as TIG's representatives and principals. The Committees will coordinate with Purdue's other governmental and non-governmental creditor groups to ensure that the creditors' interests as a whole are broadly represented in our discussions. Given the current situation, we anticipate that video conferences will make the most sense.

We would like to begin these discussions as soon as possible, starting with an initial video conference in the next few days to talk about how best to proceed. I would be joined by one representative each of the Ad Hoc Committee and the Unsecured Creditors Committee. Please provide us with a few dates and times when you are available for such a conversation.

Notwithstanding anything contained in or omitted from this letter, Purdue reserves all of its rights with respect to the foregoing and all other matters, and does not waive anything.

We appreciate your prompt attention to and cooperation in this matter.

Very truly yours,

Ann V. Kramer/s/

Ann Kramer

AK:mb

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cc: Scott Gilbert, counsel to the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (USPS Express Mail, gilberts@gilberlegal.com, via email)
Arik Preis, counsel to the Official Committee of Unsecured Creditors (USPS Express Mail, apreis@akingump.com, via email)
George R. Calhoun (george@ifrahlaw.com, via email)

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EXHIBIT A

SCHEDULE OF INSURANCE POLICIES

Current Insurer	Named Insurer In Policy	Policy Number	Policy Term
Ironshore Specialty Insurance Company ("Ironshore")	TIG Specialty Insurance Company	XEX 37690728/XLX38822826	7/1/2001–7/1/2002
Ironshore	TIG Specialty Insurance Company	XEX 37690728/XLX38822826	7/1/2002–10/1/2002

Exhibit B

ReedSmith
Driving progress through partnership
Ann Kramer
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October 2, 2020

BY ELECTRONIC AND OVERNIGHT MAIL
Christopher R. Carol
Kennedys Law LLP
120 Mountain View Boulevard
P.O. Box 650
Basking Ridge, NJ 07920
Christopher.Carrol@kennedyslaw.com

Re: Chapter 11 Bankruptcy Proceedings of Purdue Pharma L.P. and associated entities (collectively, "Purdue")

Dear Chris:

I am writing on behalf of the Debtors, the Official Committee of Unsecured Creditors (the "Official Committee"), and the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (the "Ad Hoc Committee"). The purpose of this letter is to update TIG Specialty Insurance Company (n/k/a Ironshore Specialty Insurance Company) ("TIG") on recent developments in Purdue's bankruptcy proceedings and to request dates over the next couple of weeks to have an initial video call to kickstart discussions concerning a consensual resolution of TIG's coverage obligations with respect to opioid-related claims against Purdue and its officers, directors, and employees. We believe that, given recent developments, it is in everyone's interests to move those discussions forward as promptly and expeditiously as possible.

In short, as discussed below, phase I of the mediation in the bankruptcy case (which concerned the allocation of assets among Purdue's public and private claimants), has been largely concluded, and the mediators have filed on the docket a report outlining the results. That report is attached. Purdue and its claimants intend to turn next to phase II, during which they will seek to resolve, among other things, open issues among the Debtors, the creditors, and the Sackler family. The Court's order concerning phase II, as well as the prior order referenced therein, also are attached.

The Debtors hope to conclude phase II by the end of November, and believe that they will be able to file a reorganization plan by the end of the year and have it confirmed in the months thereafter. Given that the plan likely will provide for a channeling injunction for the benefit of those insurers that resolve their coverage obligations prior to confirmation, there is now a limited window to resolve TIG's coverage obligations with that protection.

As Purdue reported in my letter approximately two months ago, United States Bankruptcy Judge Robert D. Drain had ordered Purdue and its opioid creditor groups to mediate before Layn Phillips and Kenneth Feinberg regarding how Purdue's assets will be allocated in a plan of reorganization. In the same letter, Purdue stated that tens of thousands of proofs of claim had been filed and additional claims would

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continue to be filed through the July 30, 2020 deadline set by Judge Drain. Purdue then advised that its creditors' demands exceeded, by orders of magnitude, the limits of liability of Purdue's insurance policies (where applicable).

As it turned out, while the proofs of claim are still being tabulated and analyzed, it appears that the total number of filed proofs of claim will be close to 615,000, and the aggregate value asserted for the claims will be in the many trillions of dollars.

As a result of phase I mediation discussions, non-federal public claimants have agreed in principle to parameters for allocating Purdue's assets among themselves and with Native American Tribes. In addition, as set forth in the mediators' report, the non-federal public claimants have entered into individual term sheets outlining the allocation of estate value to certain private claimant groups—personal injury claimants, hospitals, third party payors, and certain NAS claimants. Also as set forth in the mediators' report, these term sheets remain contingent upon satisfaction of other issues related to final plan confirmation. Purdue will provide the specific terms of the agreements between its creditor groups once they are finalized and made public or an agreement is reached among all stakeholders to permit disclosure to Purdue's insurers.

These developments underscore the importance of moving forward promptly to resolve Purdue's insurers' obligations to address the opioid-related liabilities that are the subject of the bankruptcy proceeding. Purdue and its creditors—who are the ultimate beneficiaries of Purdue's insurance—remain interested in resolving Purdue's coverage consensually, if possible. If TIG would like the benefit of a channeling injunction, we need to reach a resolution within the next several months, and we are prepared to work with you to accomplish that goal.

Please let us know your availability over the next two weeks for an initial call to discuss the Debtors' coverage claims and a process to resolve them on a consensual basis. Please also let us know who will participate in the initial video conference on behalf of TIG. Once we receive your available dates and confirm availability on our side, we will send around a calendar invite. We anticipate that the initial meeting will last no more than 90 minutes.

Please note that notwithstanding anything contained in or omitted from this letter, Purdue, the committees, and Purdue's creditors as a whole reserve all of their rights with respect to the foregoing and all other matters and do not waive anything.

With best regards,

Ann V. Kramer

cc: Arik Preis, counsel to the Official Committee (apreis@akingump.com, via email)
Scott Gilbert, counsel to the Ad Hoc Committee (gilberts@gilbertlegal.com, via email)

Attachments

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
PURDUE PHARMA L.P., *et al.*,	:	Case No. 19-23649 (RDD)
Debtors.	:	(Jointly Administered)

MEDIATORS' REPORT

The Honorable Layn Phillips and Mr. Kenneth Feinberg, appointed co-mediators (the "Mediators") in these cases pursuant to an order of this Court entered March 4, 2020 (the "Mediation Order") (Dkt. No. 895),[1] respectfully submit this report in accordance with paragraph 17 of the Mediation Order.

Initial Statement

1. The Mediators report that every participant in the Mediation, whether participating as an official Mediation Party or informally, engaged with both the Mediators and one another in good faith for the purpose of negotiating an allocation of the Debtors' estate as among the Private Claimants and Non-Federal Public Claimants. The participants in the Mediation process who were not "Mediation Parties" included the United States of America, Native American Tribes, representatives of a putative class of independent public school districts (the "PSD")[2], proposed representatives of a putative class of children born with NAS in the State of West Virginia (the "WV NAS"), the NAACP and a group of victim advocates which refer to

[1] Unless the context requires otherwise, capitalized terms not defined in this Report have the meanings given them in the Mediation Order.

[2] The PSD also participated in Mediation pursuant to the April 21, 2020 consent order. The Public School Districts are represented by the law firms of Mehri & Skalet, and Hughes Socol Piers Resnick & Dym, Ltd. and their co-counsel. The Non-Federal Public Claimants do not include the PSD.

themselves as the "Ad Hoc Committee on Accountability". The Mediators also heard the views of individual claimants during the Mediation.

2. For ease of reference, the following defined terms are used in this report:

a. The Non-Federal Public Claimants means the Ad Hoc Group of Non-Consenting States (the "NCSG"), the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (the "AHC") and the Multistate Governmental Entity Group (the "MSGE").

b. The Personal Injury Claimants means the Ad Hoc Group of Individual Victims.

c. The TPPs means counsel for the Blue Cross Blue Shield Association, various third-party payors and health insurance carrier plaintiffs.

d. The Hospitals means the Ad Hoc Group of Hospitals.

e. The NAS Committee means the Ad Hoc Committee of NAS Children.

f. The Insurance Purchasers means a putative class of individual health insurance purchasers.

g. Native American Tribes means the Muscogee (Creek) Nation, a member of the AHC, the Cheyenne & Arapaho Tribes, an ex officio member of the Unsecured Creditors' Committee, and other federally recognized tribes represented by various counsel from the Tribal Leadership Committee and the Plaintiffs Executive Committee in MDL No. 2804.

A list of the names and counsel and principals who participated in one or more mediation sessions is attached hereto as Exhibit A.

Summary of Mediation Outcomes

The Non-Federal Public Claimants Abatement Agreement

3. During the Mediation, the Non-Federal Public Claimants agreed among themselves that all value received by them through these chapter 11 cases would be exclusively dedicated to programs designed to abate the opioid crisis, and that such value cannot be used for any other purpose (other than an amount to fund administration of the programs themselves and to pay legal fees and costs). To the Mediators' knowledge, this is the first time States, Territories, Native American Tribes and Local Governments have agreed to be bound by such a commitment. The Non-Federal Public Claimants also have agreed that these requirements will be embedded in a plan of reorganization for Purdue and the related order confirming such plan.

4. The NCSG, the AHC and the MSGE also addressed and resolved other significant issues, including value allocation for all Native American Tribes (and the inclusion of culturally appropriate abatement programs for these communities) and a default mechanism that, in the absence of a standalone agreement between a State or Territory and its political subdivisions, provides a structure and process for applying funds to abate the opioid crisis and ensures consultation through local participation mechanisms in determining which programs will be funded from value received. The NAACP and the Non-Federal Public Claimants are also committed to continuing to engage regarding concerns about the equitable implementation of the abatement program in each State. This discussion has not ended and will continue. No agreement between the PSDs and the Non-Federal Government Entities has been reached to date. We will continue to seek resolution between the PSDs and the Non-Federal Government Entities.

The Private Claimants' Agreements

5. Subject to limited conditions discussed below, there are four written term sheets each of which, individually, is supported by the Debtors, the Non-Federal Public Claimants and the specific individual Private Claimant group (or counsel to certain members of such Private Claimant Group) that is counterparty to such term sheet, which addresses allocation of estate value to each Private Claimant group, respectively. Such term sheets have been reached, respectively, with each of the Personal Injury Claimants, the Hospitals, counsel to certain of the TPPs, and the NAS Committee (with regard to abatement) (the "TS Private Claimants"). In addition, the Debtors and the Insurance Purchasers have reached an agreement for an agreed sum to be paid over two years that will be dedicated to a specific abatement use that has been agreed by the Debtors and the Insurance Purchasers.

6. Subject to the terms of the term sheet reached with the Personal Injury Claimants, personal injury claimants will be eligible to receive cash distributions through fair and equitable trust distribution procedures developed by the Personal Injury Claimants but subject to the consent of the Non-Federal Public Claimants, such consent not to be unreasonably withheld, and approval by the Court as part of a confirmed plan of reorganization. The NAS Committee (with regard to personal injury claims) and others are participating in the drafting of the trust distribution procedures.

7. The term sheets for the Hospitals, TPPs, and NAS Committee (with regard to abatement) require each private creditor group to use substantially all of their respective allocations to fund mutually agreeable programs designed to abate the opioid crisis (including treatments), pursuant to commitments embodied in a confirmed plan of reorganization.

Other Elements of the Term Sheets

8. While certain details of the term sheets remain to be finalized, there are certain similarities among the agreements, as set forth below.

9. First, each of the Private Claimants will receive a fixed amount of value over time, the values and time periods varying for each such group.

10. Second, in exchange for this treatment under a confirmed plan of reorganization, the Private Claimants will release (or support releases of) the Debtors, their estates, and their respective current and former officers, directors, employees, and owners (and any related trusts and their respective trustees and beneficiaries), subject to paragraph 12 below.

11. Third, legal fees for each Private Claimant group will be paid exclusively out of its agreed distribution or by other agreements with individual claimants (and not by the estate), although the application of legal fees remains to be resolved between the Non-Federal Public Claimants and each of the Private Claimant groups.

12. Fourth, all term sheets with the TS Private Claimants are conditioned on the Court's confirmation of a plan of reorganization that includes participation by the Sackler family in the plan of reorganization (although this does not limit the ability of any Non-Federal Public Claimant to object to or vote against a plan of reorganization). Three of the four term sheets also are conditioned on resolution of the United States' claims on terms reasonably acceptable to the Non-Federal Public Claimants, and email correspondence with respect to the fourth term sheet addresses this issue as well.

Next Steps

13. As indicated above, there remain terms to be negotiated by the parties with respect to each of the term sheets in order to reach final agreements between each of the four TS

Private Claimant groups and the Non-Federal Public Claimants, respectively. In addition, the Debtors and the Insurance Purchasers will need to finalize their agreement.

14. The Non-Federal Public Claimants and the four TS Private Claimants have indicated an intent to work diligently with the Mediators to resolve certain remaining open issues pertaining to their term sheets. The Debtors and the Insurance Purchasers will do the same.

15. We have agreed to remain available throughout September (and, if necessary, longer) to help facilitate resolution of open issues.

Dated: September 23, 2020

By: 
Layn R. Phillips

By: *Ken Feinberg pp Layn R. Phillips*
Kenneth R. Feinberg

Mediators

Exhibit A

List of Mediation Parties

Mediation Parties	Name of Individual Participants
Debtors	Marc Kesselman (Purdue Pharma L.P.) Marshall Huebner (Davis Polk & Wardwell LLP) Frances Bivens (Davis Polk & Wardwell LLP) Benjamin Kaminetzky (Davis Polk & Wardwell LLP) Eli Vonnegut (Davis Polk & Wardwell LLP) Sheila Birnbaum (Dechert LLP)
Official Committee of Unsecured Creditors	Arik Preis (Akin Gump Strauss Hauer & Feld, LLP) Sara Brauner (Akin Gump Strauss Hauer & Feld, LLP) Mike Atkinson (Province, LLP)
NCSG	Michelle Burkart (California Attorney General) Judith Fiorentini (California Attorney General) Kimberly Massicotte (Connecticut Attorney General) Jeremy Pearlman (Connecticut Attorney General) Sandy Alexander (Massachusetts Attorney General) Gillian Feiner (Massachusetts Attorney General) M. Umair Khan (New York Attorney General) David Nachman (New York Attorney General) James Donahue (Pennsylvania Attorney General) Neil Mara (Pennsylvania Attorney General) Melissa Van Eck (Pennsylvania Attorney General) Tad O'Neill (Washington Attorney General) Pillsbury Winthrop Shaw Pittman LLP
AHC	John Guard (Florida Attorney General) Gary Gotto (Keller Rohrback LLP) Joseph Rice (Motley Rice LLC) Pamela Thurmond (City of Philadelphia) Paul Hanly (Simmons Hanly Conroy LLC) Michael Leftwich (Tennessee Attorney General) Jennifer Peacock (Tennessee Attorney General) Paul Singer (Texas Attorney General) Brown Rudnick LLP Gilbert LLP Kramer Levin Naftalis & Frankel LLP Otterbourg P.C.

Mediation Parties	Name of Individual Participants
MSGE	Joanne Cicala (The Cicala Law Firm PLLC) F. Jerome Tapley (Cory Watson, P.C.) John White (Harrison White, P.C.) Dara Hegar (The Lanier Law Firm) Todd Court (McAfee & Taft) Jeffrey Simon (Simon Greenstone Panatier, P.C.) Shelly Sanford (Watts Guerra LLP) Caplin & Drysdale
Personal Injury Claimants	Ryan Hampton (Individual) Cheryl Juaire (Individual) Anne Andrews (Andrews & Thornton) Sean Higgins (Andrews & Thornton) Ed Neiger (ASK LLP) Ed Gentle (Gentle, Turner, Sexton & Harbison, LLC) Chris Shore (White & Case LLP)
TPPs	Mark Fischer (Rawlings & Associates, PLLC) Tom Sobol (Hagens Berman Sobol Shapiro LLP) Lauren Barnes (Hagens Berman Sobol Shapiro LLP) Gerald Lawrence (Lowey Dannenberg P.C.)
Hospitals	John W. (Don) Barrett (Barret Law Group, P.A.) Robert A. Clifford (Clifford Law Offices, P.C.) Jonathan W. Cuneo (Cuneo Gilbert & LaDuca, LLP)
NAS Committee	Celeste Brustowicz (Cooper Law Firm, LLC) Scott Bickford (Martzell Bickford & Centola, LLC) Calvin Fayard (Calvin C. Fayard, Jr. APC) Kevin Malone (Krupnick Campbell Malone)
Insurance Purchasers	Nicholas F. Kajon (Stevens & Lee, P.C.) James Young (Morgan & Morgan, P.A.) Juan R. Martinez (Morgan & Morgan, P.A.)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
PURDUE PHARMA L.P., *et al.*,	:	Case No. 19-23649 (RDD)
Debtors.	:	(Jointly Administered)

ORDER EXPANDING SCOPE OF MEDIATION

Entry of an order (this "Supplemental Mediation Order") supplementing the order (the "Mediation Order")[1] entered by the Court on March 4, 2020 [Dkt. No. 895] directing the appointment of the Honorable Layn Phillips and Mr. Kenneth Feinberg (the "Mediators") to serve as co-mediators in these chapter 11 cases as set forth therein being in the estates' best interests; and the Court having jurisdiction to consider such request pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Supplemental Mediation Order being a core proceeding under 28 U.S.C. § 157(b) that this Court may decide by a final order consistent with Article III of the United States Constitution; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that no other or further notice or a hearing is required; and after due deliberation the Court having determined that such relief is in the best interests of the Debtors, their estates, their creditors and all parties in interest,

IT IS HEREBY ORDERED THAT:

[1] Unless the context requires otherwise, capitalized terms not defined in this Order have the meanings given them in the Mediation Order.

1. This Supplemental Mediation Order supplements the Mediation Order, as set forth herein, and all provisions of the Mediation Order not expressly amended hereby remain in full force and effect.

2. In accordance with paragraph 3 of the Mediation Order, the Mediators are authorized to continue the existing mediation to resolve open issues referenced in the *Mediators' Report* [Dkt. No. 1716]; *provided* that the Non-Federal Public Claimants and the Private Claimants shall not reopen or renegotiate issues that have already been resolved in the mediation as of such date.

3. In accordance with paragraph 3 of the Mediation Order, the scope of the Mediators' authority shall be expanded to authorize the Mediators to mediate any and all potential claims or causes of action that may be asserted by the estate or any of the Non-Federal Public Claimants against the Covered Parties (as defined in the *Amended and Restated Case Stipulation Among the Debtors, the Official Committee of Unsecured Creditors and Certain Related Parties* [Dkt. No. 518]) or that may otherwise become the subject of releases potentially granted to the Covered Parties in these chapter 11 cases (the "Shareholder Claims").

4. With respect to the mediation of Shareholder Claims as set forth herein, the Mediation Parties shall consist solely of the (i) Debtors, (ii) Creditors' Committee, (iii) Consenting Ad Hoc Committee, (iv) Non-Consenting States, (v) MSGE Group, and (vi) representatives of the Covered Parties. To the extent not previously executed, the Mediation Parties shall execute and agree to be bound by the Protective Order. The Federal Government shall be entitled, without further order of the Court, to participate in mediation sessions as an observer. The advisors to the Mediation Parties listed in this paragraph 4 shall be permitted to disclose information, including, without limitation, discussions, proposals, agreements, and written materials but expressly

excluding any proposal, mediation position, analysis, agreement or similar information from or with a mediation party who has not consented to its disclosure under this paragraph regarding the mediation of Shareholder Claims to counsel to any party that is bound both by the Protective Order and the Mediation Order (including, as applicable for such party, so long as such counsel is included within the designated counsel pursuant to paragraph 44 of the Protective Order), which counsel shall continue to be bound by the Protective Order in connection with the receipt of any such information.

5. The mediation with respect to the Shareholder Claims authorized hereby shall continue until terminated by the Mediators or by further order of this Court.

6. Paragraph 14 of the Mediation Order is hereby amended and restated as follows: To the extent that any Mediation Party is in possession of privileged or confidential documents and/or information provided to such Mediation Party pursuant to the terms and conditions of the Protective Order, such information may (with the written consent of the party that owns such privilege), but shall not be required to, be disclosed to the Mediators and other Mediation Parties, but shall otherwise remain privileged and confidential. Any Mediation Party may provide documents and/or information to the Mediators that are subject to a privilege or other protection from discovery, including the attorney-client privilege, the work product doctrine, or any other privilege, right, or immunity the parties may be entitled to claim or invoke (the "Privileged Information"). By providing the Privileged Information to the Mediators or by consenting in writing to the Mediators providing such Privileged Information to another party, no Mediation Party nor its respective professionals intends to, nor shall, waive, in whole or in part, the attorney-client privilege, the work-product doctrine, or any other privilege, right or immunity they may be entitled to claim or invoke with respect to any Privileged Information or otherwise. Any work product, materials, or information shared or produced by a Mediation Party with the Mediators, including Privileged Information, shall be subject to all applicable

mediation privileges and shall not be shared by the Mediators with any other Mediation Parties without the consent of the sharing or producing Mediation Party.

7. References to "Mediation Parties" in paragraphs 5, 9, 10, 11, 12, and 13 of the Mediation Order shall be construed, for purposes of mediation of the Shareholder Claims, to apply to the Mediation Parties listed in paragraph 4 hereof.

8. Participation in the mediation does not waive any jurisdictional defenses that otherwise would apply to any party, all of which defenses are reserved.

9. Except as expressly set forth herein, the Mediation Order shall remain in full force and effect.

10. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: September 30, 2020
White Plains, New York

/s/Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
1. UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
PURDUE PHARMA L.P., *et al.*,	**Case No. 19-23649 (RDD)**
Debtors.[1]	**(Jointly Administered)**

ORDER APPOINTING MEDIATORS

Upon the unopposed motion (the "**Motion**") of Purdue Pharma L.P. ("**PPLP**") and its affiliates that are debtors and debtors in possession in these cases (collectively, the "**Debtors**," the "**Company**," or "**Purdue**"), for entry of an order (this "**Order"**) directing the appointment of the Honorable Layn Phillips and Mr. Kenneth Feinberg as co-mediators and requiring that the Mediation Parties (defined herein) attend and participate in good faith in mediation, which will involve the mediation of the issue(s) defined herein, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012 (Preska, C.J.),[2] as a core matter under 28 U.S.C. § 157(b)(1) that this Court may decide by a final order consistent with Article III of the United States Constitution; and this Court having found that venue in this district is proper pursuant to 28 U.S.C. § 157(b); and it appearing that the relief requested is in the best interests of the

[1] The Debtors in these cases, along with the last four digits of each Debtor's registration number in the applicable jurisdiction, are as follows: Purdue Pharma L.P. (7484), Purdue Pharma Inc. (7486), Purdue Transdermal Technologies L.P. (1868), Purdue Pharma Manufacturing L.P. (3821), Purdue Pharmaceuticals L.P. (0034), Imbrium Therapeutics L.P. (8810), Adlon Therapeutics L.P. (6745), Greenfield BioVentures L.P. (6150), Seven Seas Hill Corp. (4591), Ophir Green Corp. (4594), Purdue Pharma of Puerto Rico (3925), Avrio Health L.P. (4140), Purdue Pharmaceutical Products L.P. (3902), Purdue Neuroscience Company (4712), Nayatt Cove Lifescience Inc. (7805), Button Land L.P. (7502), Rhodes Associates L.P. (N/A), Paul Land Inc. (7425), Quidnick Land L.P. (7584), Rhodes Pharmaceuticals L.P. (6166), Rhodes Technologies (7143), UDF LP (0495), SVC Pharma LP (5717), and SVC Pharma Inc. (4014). The Debtors' corporate headquarters is located at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901.

[2] Capitalized terms not defined herein shall have the same meaning ascribed to them in the Motion.

Debtors, their estates, and creditors; and that adequate notice has been given and that no further notice is necessary; and after due deliberation, and good and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.

2. The Court authorizes and appoints the Honorable Layn Phillips and Mr. Kenneth Feinberg, working together on the same terms (both economic and non-economic), to serve as co-mediators in these chapter 11 cases (each a "**Mediator**," and together, the "**Mediators**") and to conduct the mediation as set forth herein. The Mediators will be compensated at a rate of $500,000 per month each. The Mediators, upon agreement between them, shall be entitled to retain, in their sole discretion, financial, public health or other professionals or consultants to assist them; *provided however* that the aggregate cost of all such financial or other professionals or consultants so retained shall not exceed $250,000 without further order of this Court.

3. The Mediators are authorized to mediate the dispute(s) between the Non-Federal Public Claimants, on the one hand, and the Private Claimants,[3] on the other, as to the allocation of value/proceeds available from the Debtors' estates, including, without limitation, from any settlements, to such claimants, in each case on an aggregate basis as between them. In doing so, the Mediators and Mediation Parties may need to consider a variety of concepts and issues, including, without limitation, various sources of value for the estates, various claims of persons or entities who are not Mediation Parties, the interests of private non-Mediation Parties, such as individuals for whom health care professionals have prescribed the Debtors' FDA-approved pain and other medications, and different modes and methods of allocation. In addition, the Mediators

[3] "Private Claimants" include the parties listed in paragraph 6.b.

may, in their discretion, recommend to the Mediation Parties an expansion to the scope of the mediation. However, subject to the following sentence or further order of this Court, the Mediators are not authorized to mediate disputes, if any, with respect to the allocation(s) of value/proceeds among entities or persons comprising the Non-Federal Public Claimants or among entities or persons comprising the Private Claimants. The Mediators may also mediate any other issues that are agreed upon by all of the Mediation Parties.

4. The Mediation Parties shall consist of the following: (i) the Debtors; (ii) the Official Committee of Unsecured Creditors (including any *ex officio* members) (the "**Creditors' Committee**"); (iii) the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (the "**Consenting Ad Hoc Committee**"); (iv) the Ad Hoc Committee of NAS Babies; (v) the Ad Hoc Group of Hospitals[4]; (vi) the Ad Hoc Group of Non-Consenting States (the "**Non-Consenting States**"); (vii) the Multi-State Governmental Entities Group (the "**MSGE Group**"); (viii) the Ad Hoc Group of Individual Victims; (ix) counsel for the Blue Cross Blue Shield Association, various third party payors and health insurance carrier plaintiffs; and (x) the group of individual health insurance purchasers, represented by Stevens & Lee. P.C. (the "**Insurance Purchasers"**) (each, a "**Mediation Party**," and, together, the "**Mediation Parties**").[5] To the extent not previously executed, the Mediation Parties shall execute and agree to be bound by the Protective Order signed by the Court on January 27, 2020, Dkt. No. 784 (the "**Protective Order**").

[4] "Ad Hoc Group of Hospitals" shall have the meaning set forth in the *Verified Statement of the Ad Hoc Group of Hospitals Pursuant to Bankruptcy Rule 2019* [Dkt. No. 577] (as the same may be amended, modified or supplemented from time to time).

[5] Nothing in this Order is intended to or shall compel trade claimants (independently of their fiduciary, the UCC), the Debtors' current or former employees, officers and directors, the Federal Government or the shareholders to participate in the mediation at this time.

5. Unless otherwise directed by the Mediators, each of the Mediation Parties, including a representative subset of their respective principals, attorneys, and advisors who are able to participate and make recommendations on behalf of the applicable Mediation Party shall attend and participate in the mediation sessions. For the avoidance of doubt, nothing in this Order seeks to delegate the ultimate decision-making authority on any potential resolution of the mediation from a particular Non-Federal Public or Private Claimant to a representative subset; *provided however*, that any settlement agreement(s) involving any Mediation Party reached through mediation shall be subject to the provisions of paragraph 10. The Mediators, after consultation with the Mediation Parties, may request each Mediation Party participating in a mediation session to appear with at least one principal, although, for the avoidance of doubt, the selection of that principal shall be left to the discretion of each Mediation Party and nothing in this Order requires, or is intended to require—even at the request of the Mediators—the direct participation or attendance at the Mediation by, any particular individual or any individual holding a particular title or rank.

6. For the avoidance of doubt:

a. "Non-Federal Public Claimants," as defined in the Motion and used in this Order in connection with the mediation, includes only the states, federal districts and U.S. territories, political subdivisions of the states and Native American Tribes, and does not include the federal government of the United States, or any agency, department, or instrumentality of the federal government (the "**Federal Government**"). The Federal Government is not required to participate in the mediation at this time. All rights of the Federal Government—and, indeed, all of the parties—with respect to the valuation and ultimate plan

treatment of any claims of the Federal Government are fully reserved. Notwithstanding any other provision of this Order, the Federal Government shall be entitled, without further order of the Court, to send representatives to observe mediation sessions, in a manner to be specified further under the Mediation Procedures (defined below).

b. "Private Claimants" as defined in this Motion and used in the Proposed Order in connection with the mediation includes only certain private parties, including, hospitals; health insurance carrier plaintiffs and third party payors; purchasers of private health insurance; various individuals and estates alleging personal injury or wrongful death claims, including guardian claimants asserting claims on behalf of minors born with NAS due to exposure to opioids in utero; and claimants comprising a putative class of NAS children seeking medical monitoring funding, and does not include trade claimants (except to the extent represented by their fiduciary, the UCC), current or former employees, officers or directors of the Debtors, or members of the Sackler family (in any capacity). All rights of these parties—and, indeed, of all parties in interest—with respect to the valuation and ultimate plan treatment of any claims of, or against, these parties not currently in the mediation are fully reserved.

7. Additional parties in interest other than the Mediation Parties (the "**Additional Parties**") may participate voluntarily in the mediation in response to a request from the Mediators, or further order of this Court. The Mediators may request that the Court order any Additional Parties to attend the mediation, and nothing herein limits any Mediation Party's rights with respect to the ability to make such a request of the Court. In such event, appropriate notice and a hearing

shall be provided. All Additional Parties shall become subject to all of the provisions of this Order and shall agree to be bound by the Protective Order.

8. No later than three business days following the entry of this Order, or as soon thereafter as the Mediators are available, the Mediators shall meet and confer with the Mediation Parties and the Federal Government to commence discussions regarding mediation procedures and a schedule for mediation, which shall be consistent with the terms of this Order in all material respects (collectively, the "**Mediation Procedures**"). The Mediators will ultimately determine the Mediation Procedures, in their sole discretion, so long as such procedures are consistent with the terms of this Order in all material respects.

9. Except as provided in paragraphs 7 and 17, the Mediators shall have no communication with the Court relating to the substance of the mediation or matters occurring during the mediation. Further, the Mediators shall not disclose whether a verbal agreement was reached or a Mediation Party has refused to execute a definitive written settlement agreement. The Mediators shall have no obligation to make written comments or recommendations. Except as provided in paragraph 17, the Mediators shall not be compelled to testify or disclose any information concerning the mediation in any forum or proceeding, nor shall any Mediation Party, any Additional Party, or any other party in interest: (a) call or subpoena the Mediators as a witness or expert in any proceeding relating to the mediation, the subject matter of the mediation, or any thoughts or impressions that the Mediators may have about the Mediation Parties, or their respective positions, in the mediation; (b) subpoena any notes, documents or other materials prepared by the Mediators in connection with the mediation; or (c) offer any statements, views or opinions of the Mediators in connection with any proceeding, including, without limitation, any pleading or other submission to any court.

10. Subject to paragraph 5: (a) no party shall be bound by anything said or done during the mediation, unless a Mediation Party voluntarily agrees to be so bound by a written and signed stipulation submitted to the Mediators and the Mediation Parties; and (b) the results of the mediation are non-binding unless the Mediation Parties that agree to be so bound otherwise agree; *provided however*, that any settlement agreement(s) reached through mediation reduced to writing and signed shall be as binding against each signatory as those reached through litigation, subject, with respect to the Debtors, to the requirements of section 363(b) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, and this Court will retain jurisdiction to enforce any such settlement agreement(s).

11. All communications made by and all submissions prepared by a Mediation Party in connection with the mediation, including but not limited to: (a) discussions among any of the Mediation Parties during the course of the mediation, including discussions with or in the presence of the Mediators, (b) mediation statements and any other documents or information provided to the Mediators or the Mediation Parties in the course of the mediation, and (c) all correspondence, settlement proposals, counterproposals, term sheets, and offers of compromise produced for, as a result of, or in connection with the mediation (collectively, the "**Settlement Proposals"**) shall remain confidential, shall not be made available to the public and, as applicable, shall be subject to the Protective Order; *provided however*, that (i) the party making any such Settlement Proposal may agree to the disclosure of such Settlement Proposal pursuant to a confidentiality agreement or otherwise; and (ii) nothing in this Order limits the ability of any Mediation Party to (x) speak publicly (whether through court pleadings, court statements or otherwise) regarding issues in these cases, provided that doing so does not disclose confidential mediation exchanges, data or discussions regarding Settlement Proposals or responses thereto, or (y) comment on the opioid

crisis and those involved in it, these Debtors or these cases, provided that doing so does not, independently of this Order, violate the Protective Order. The materials described in each of the foregoing clauses (a) through (c): (i) shall be protected from disclosure (and shall not be disclosed) to any other Mediation Party or to any other person or party who is not a Mediation Party (including holders of claims for which the Mediation Party is acting in a representative, agent or trustee capacity to the extent such holders are not themselves Mediation Parties) except in accordance with this Order or an applicable confidentiality agreement; (ii) shall not constitute a waiver of any existing privileges and immunities; (iii) shall not be used for any purpose other than the mediation; (iv) shall be subject to protection under Rule 408 of the Federal Rules of Evidence and any equivalent or comparable state law; and (v) except for the sole purpose of enforcing in the Court a settlement agreement reached in this mediation, shall not be admissible for any purpose in any judicial or administrative proceeding. For the avoidance of doubt, if no such settlement agreement is reached, then the foregoing materials shall not be admissible anywhere. The terms of the Protective Order and this Order shall govern any issues with respect to any Mediation Party's disclosure of any Settlement Proposals.

12. The Mediation Parties and their counsel and advisors shall not in any way disclose to any non-party or to any court, including, without limitation, in any pleading or other submission to any court, any such discussion, mediation statement, other document or information, correspondence, resolution, or Settlement Proposal (subject to paragraph 11) that may be made or provided in connection with the mediation; *provided however*, that nothing in this Order shall prevent a Mediation Party from sharing with the Mediators, and thereafter disclosing, to the extent not prohibited by a separate confidentiality agreement or the Protective Order, any draft objections, any potential legal arguments such Mediation Party may raise in the chapter 11 cases, reports of

its own experts, any document produced or obtained in discovery, any information that is, was, or becomes available to a Mediation Party outside of the mediation, such Mediation Party's own work product or materials, or other pleadings filed or to be filed by such Mediation Party with a court of competent jurisdiction.

13. Notwithstanding anything in this Order to the contrary, nothing in this Order other than compliance with the Protective Order shall prevent a Mediation Party from disclosing information revealed during the mediation to the extent such disclosure is required, or as may be required or requested by a governmental or regulatory entity with oversight or other authority over such Mediation Party, that is within the oversight or other authority of such governmental or regulatory entity, or required by statute or court order or other legal or regulatory requirements applicable to such Mediation Party; *provided however*, that if such Mediation Party is requested or required to disclose any information to any third party or governmental or regulatory authority, such Mediation Party shall, to the extent not legally prohibited, provide the disclosing party with prompt written notice of such requirement prior to any disclosure and shall furnish only that portion of such information or take only such action as is legally required.

14. To the extent that any Mediation Party is in possession of privileged or confidential documents and/or information provided to such Mediation Party pursuant to the terms and conditions of the Protective Order, such information may, but shall not be required to, be disclosed to the Mediators and other Mediation Parties, but shall otherwise remain privileged and confidential. Any Mediation Party may provide documents and/or information to the Mediators that are subject to a privilege or other protection from discovery, including the attorney-client privilege, the work-product doctrine, or any other privilege, right, or immunity the parties may be entitled to claim or invoke (the "**Privileged Information**"). By providing the Privileged

Information solely to the Mediators and no other party, no Mediation Party nor its respective professionals intends to, nor shall, waive, in whole or in part, the attorney-client privilege, the work-product doctrine, or any other privilege, right or immunity they may be entitled to claim or invoke with respect to any Privileged Information or otherwise. Any work product, materials, or information shared or produced by a Mediation Party with the Mediators, including Privileged Information, shall be subject to all applicable mediation privileges and shall not be shared by the Mediators with any other Mediation Parties without the consent of the sharing or producing Mediation Party.

15. Nothing in this Order is intended to, nor shall it, waive, release, compromise, or impair in any way whatsoever, any claims or defenses that a party has or may have, whether known or unknown, in connection with or relating to acts or omissions that took place prior to entry of this Order.

16. Nothing in this Order is intended to, nor shall it operate as, granting relief from the automatic stay in the chapter 11 cases, or the Preliminary Injunction, as amended from time to time, entered by the Court in the adversary proceeding styled, *Purdue Pharma L.P. et al. v. Commonwealth of Massachusetts et al.*, Adv. Proc. No. 19-08289 (Bankr. S.D.N.Y. Nov. 6, 2019) (RDD), Dkt. No. 105.

17. Promptly following the termination of the mediation in accordance with the Mediation Procedures (such date, the "**Termination Date**"), but no later than two (2) business day after the Termination Date, the Mediators shall file a notice with the Court setting forth the following: (a) that the Mediators have conducted the mediation, (b) the names of the participants

in the mediation, (c) whether the participants in the mediation acted in good faith, and (d) whether and to what extent the mediation was successful.

18. The Mediators shall be immune from claims arising out of acts or omissions incident to their service as Mediators in these chapter 11 cases.

19. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Order in accordance with the Motion.

20. For the avoidance of doubt, to the extent any part of this Order shall conflict with Local Rule 9019-1 or the General Order, the terms and provisions of this Order shall govern.

21. This Court retains exclusive jurisdiction to enter supplemental orders concerning all matters arising from or related to the implementation, interpretation, and enforcement of this Order, and to enter such orders at continued hearings on this Motion.

Dated: March 3, 2020
White Plains, New York

/s/Robert D. Drain

THE HONORABLE ROBERT D DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit C

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

- x

In the Matter of:

PURDUE PHARMA L.P., et al., Case No. 19-23679 (RDD)

(Jointly Administered)

Debtors.

- x

United States Bankruptcy Court

One Bowling Green

New York, New York 10004-1408

January 20, 2021

10:08 AM

HEARING HELD TELEPHONICALLY

VIA COURT SOLUTIONS

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

Hearing re: Motion of the Debtors for an Order Approving Stipulation and Agreed Order Granting Joint Standing to Prosecute Claims and Causes of Action Related to the Insurance Coverage to (1) Official Committee of Unsecured Creditors and (2) Ad Hoc Committee of Governmental and other Contingent Litigation Claimants (ECF #2227)

Hearing re: Objection to Motion (related document(s)2227) filed by George Calhoun IV on behalf of Ironshore Specialty Insurance Company. (ECF #2281)

Hearing re: The Ad Hoc Group of Non-Consenting States Statement in Support of Debtors Motion to Approve Stipulation Granting Joint Standing to Prosecute Claims and Causes of Action Related to the Debtors Insurance Coverage to (1) the Official Committee of Unsecured Creditors and (2) the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants Filed by Andrew M. Troop on Behalf of Ad Hoc Group of Non-Consenting States. (ECF #2289)

Hearing re: Reply in Support of the Motion of the Debtors for an Order Approving Stipulation and Agreed Order Granting Joint Standing to Prosecute Claims and Causes of Action to the Insurance Coverage to (1) Official Committee of Unsecured Creditors and (2) Ad Hoc Committee of Governmental and other Contingent Litigation Claimants (related document(s)2227) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2292)

Hearing re: Motion to Approve/Motion for Claim Payment, re: Claims No. 10231, 615270, 615218 and 614341 with Certificate of Service filed by Deborah Clonts (ECF #2059)

Hearing re: Objection to Motion / Debtors' Omnibus Objection to Deborah Clont's Motions to Approve Claimant Payment and for Lift of Automatic Stay (related document(s)2209, 2059, 2175) filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF#2266)

Hearing re: Motion for Lift of Automatic Stay filed by Deborah Clonts (ECF #2175)

Hearing re: Debtors' Omnibus Objection to Deborah Clont's Motions to Approve Claimant Payment and for Lift of Automatic Stay (related document(s)2209, 2059, 2175) filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #2266)

Hearing re: Letter dated 12/21/2020 in support of Amended Motion for Lifting of the Automatic Stay (dated 12/21/2020) Filed by Deborah Clonts (ECF #2194)

Hearing re: Amended Motion to Amend Motion for Lift of Automatic Stay (related document(s)2175) filed by Deborah Clonts (ECF #2209)

Hearing re: Fifth Amended Order Extending Time to Object to Dischargeability of Certain Debts (related document(s)1829, 1289, 700, 720, 1009, 1524) filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. with presentment to be held on 1/19/2021 at 10:00 AM (ECF #2220)

Hearing re: Objection to Debtors' Fifth Amended Order Extending Time to Object to Dischargeability of Certain Debts filed by Deborah Clonts (ECF #2270)

Hearing re: Debtors' Reply in Further Support of the Fifth Amended Order Extending Time to Object to Dischargeability of Certain Debts [Related to ECF No. 2220 and ECF No. 2270] filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #2287)

Hearing re: Motion of Debtors for Entry of an Order Extending Time to Object to Dischargeability of Certain Debts (ECF #700)

Hearing re: Order signed on 1/7/2020. Extending Time to Object to Dischargeability of Certain Debts (ECF #720)

Hearing re: First Order signed on 4/2/2020 Extending Time to Object to Dischargeability of Certain Debts (related document(s)720) (ECF #1009)

Hearing re: Second Amended Order signed on 6/17/2020 Extending Time to Object to Dischargeability of Certain Debts (ECF #1290)

Hearing re: Third Amended Order signed on 7/27/2020 Extending Time to Object to Dischargeability of Certain Debts to and including November 2, 2020 (ECF #1524)

Hearing re: Fourth Amended Order signed on 10/21/2020 Extending Time to Object to Dischargeability of Certain Debts (ECF #1829)

Hearing re: Motion to Intervene filed by KatieLynn B Townsend on behalf of Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (ECF #2022)

Hearing re: Statement / The Ad Hoc Group of Non-Consenting States' Statement Regarding the Motion to Intervene and Unseal Judicial Records by Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (related document(s)2022) filed by Andrew M. Troop on behalf of Ad Hoc Group of Non- Consenting States (ECF #2065)

Hearing re: Statement in Support of Motion to Intervene (related document(s)2022) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF #2066)

Hearing re: Response /The NAS Children Ad Hoc Committee's Joinder to the Ad Hoc Group of Non-Consenting States' Statement Regarding the Motion to Intervene and Unseal Judicial Records by Dow Jones & Company, Inc., Boston Glob Media Partners, LLC and Reuters News & Media, Inc. (related document(s)2065) filed by Scott S. Markowitz on behalf of Ad Hoc Committee of NAS Babies (ECF #2090)

Hearing re: Statement of The Raymond Sackler Family In Respect of The Motion To Intervene And Unseal Judicial Records By Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (related document(s)2022) filed by Gerard Uzzi on behalf of The Raymond Sackler Family (ECF #2132)

Hearing re: Debtors' Limited Objection to the Media Intervenors' Motions to Intervene and Unseal Judicial Records and Cross-Motion to Seal Certain Judicial Records (related document(s)1828, 2188) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2252)

Hearing re: Reply to Motion to Unseal (related document(s)2022) filed by KatieLynn B Townsend on behalf of Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (ECF #2288)

Hearing re: Motion to Amend Proposed Order (related document(s)2022) filed by KatieLynn B. Townsend on behalf of Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (ECF #2039)

Hearing re: Notice of Adjournment of Hearing on Motion to Intervene and Unseal (related document(s)2022) filed by KatieLynn B Townsend on behalf of Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (ECF #2091)

Hearing re: Stipulation / Notice of Filing of Stipulation and Agreed Order Regarding Media Intervenors' Motion to Unseal Materials Filed in Connection with UCC Privilege Motions and Adjournment of Hearing on Media Intervenors' Motion to Unseal (related document(s)2022) Filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2136)

Hearing re: Stipulation and Agreed Order Signed on 12/15/2020 Regarding Media Intervenors' Motion to Unseal Materials Filed in Connection with UCC Privilege Motions and Adjournment of Hearing on Media Intervenors' Motion to Unseal (related document(s)2022) (ECF #2140)

Hearing re: Debtors' Ex Parte Motion for Entry of an Order Shortening Notice with Respect to Debtors' Motion for Entry of an Order Sealing Judicial Documents (related document(s)2252) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2153)

Hearing re: Declaration of Jon Lowne in Support of the Debtors' Limited Objection to Media Intervenors' Motions to Intervene (related document(s)2252) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2154)

Hearing re: Second Motion to Intervene and Unseal filed by KatieLynn B Townsend on behalf of Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (ECF #2188)

Hearing re: Debtors' Limited Objection to the Media Intervenors' Motions to Intervene and Unseal Judicial Records and Cross-Motion to Seal Certain Judicial Records (related document(s)1828, 2188) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2252)

Hearing re: Statement of the Raymond Sackler Family in Respect of the Second Motion to Unseal Judicial Records by Media Intervenors Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (related document(s)2132, 2188) filed by Gerard Uzzi on behalf of The Raymond Sackler Family. (ECF #2265)

Hearing re: Reply to Motion to Unseal (related document(s)2022) filed by KatieLynn B Townsend on behalf of Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (ECF #2288)

Hearing re: Debtors' Ex Parte Motion for Entry of an Order Shortening Notice with Respect to Debtors' Motion for Entry of an Order Sealing Judicial Documents (related document(s)2252) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2253)

Hearing re: Declaration of Jon Lowne in Support of the Debtors' Limited Objection to Media Intervenors' Motions to Intervene (related document(s)2252) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2254)

Hearing re: Debtors' Ex Parte Motion for Entry of an Order Shortening Notice with Respect to Debtors' Motion for Entry of an Order Sealing Judicial Documents (related document(s)2252) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2253)

Hearing re: Debtors' Limited Objection to the Media Intervenors' Motions to Intervene and Unseal Judicial Records and Cross-Motion to Seal Certain Judicial Records (related document(s)1828, 2188) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2252)

Hearing re: Debtors' Ex Parte Motion for Entry of an Order Shortening Notice with Respect to Debtors' Motion for Entry of an Order Sealing Judicial Documents (related document(s)2252) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #2153)

Hearing re: Second Motion to Intervene and Unseal filed by KatieLynn B Townsend on behalf of Dow Jones & Company, Inc., Boston Globe Media Partners, LLC, and Reuters News & Media, Inc. (ECF #2188)

Transcribed by: William J. Garling, Pamela A. Skaw, and Sherri L. Breach

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P R O C E E D I N G S

THE CLERK: Good morning, everyone. My name is Brian, one of Judge Drain's court clerks.

Just as a reminder, today's hearing is 100 percent telephonic, so we do ask everyone to please carry yourself with the same decorum you would inside the courtroom.

Please remember to keep your lines muted when not speaking so we can avoid any unnecessary background invoices that may interfere with today's hearing, and make sure to unmute yourself before speaking so that you are heard.

We do ask that everyone please state your name each time that you speak so that the judge, all other participants, and the recording for the transcriber can keep track of who is speaking at all times.

Thank you, everyone, for your cooperation and your participation, and the judge will be joining us in just a few short minutes.

(Pause)

UNIDENTIFIED SPEAKER: Hi, Dr. Jay (indiscernible).

THE COURT: Good morning, this is Judge Drain.

We're here on the omnibus hearing date in January for Purdue Pharma, L.P. et al. This hearing is completely telephonic.

You should identify yourself and if you're a

lawyer or your client, the first time you speak, you should do so thereafter so there's no doubt that the court reporter can put together your name with your voice.

Because this hearing is completely telephonic, you should keep your phone on mute unless you are speaking, of course, another which point you should unmute yourself. There's one authorized recording of these hearings. It's taken on a daily basis by Court Solutions and provided on a daily basis to our Clerk's Office.

If you want a transcript of the hearing on your matter, you should contact the Clerk's Office to arrange for the production of one.

So, with that introduction, I have the amended agenda for these omnibus hearings, which came in yesterday and I'm happy to go down that agenda in the order that the agenda lists the matters.

MR. HUEBNER: Thank you, Your Honor.

Let me first do a sound check. This is Marshall Huebner of Davis Polk, on behalf of the Debtors.

Can you Court hear me clearly?

THE COURT: Yes, I can hear you fine. Thanks.

MR. HUEBNER: Terrific.

Good morning, Your Honor. Happy new year, on this important day, obviously, on events far outside of this case.

As is our custom, I would like to give a brief, and actually in today's case, an unusually brief overall case update before turning to the agenda.

Number one, Your Honor, good news on the Noramco front. So, I would like to note for the benefit of the Court and all parties, that the Noramco Coventry sale that was approved by motion last year closed on December 31st, 2020, as we hoped it would. You know, with all the issues going on in this case (indiscernible) other cases would be very important case developments risked being lost entirely. As we stated in our September 14th motion, this sale will inject significant incremental value into the estate by reducing the cost to Purdue of obtaining necessary active pharmaceutical ingredients for various products.

And now that the transaction has closed, I'm very pleased to report that we think that the savings will be even greater than we had projected and will likely, substantially feed $100 million, frankly, of incremental value to stakeholders, which is, in the context of this case, and given the unexpected uses of the estate's value, is particularly important.

Number two, Your Honor, very briefly, what I would call cash balance and health of the business. So that the Court knows, the Debtors' cash balance as of our last publicly filed MOR is $1.275 billion, which, remarkably, is

pretty close to what the considerable cash balance was on the petition date almost a year and a half ago.

So that it's clear to all parties, this most assuredly has not been achieved through increase or even in the maintenance of the level of opioid sales. In fact, if you look at the November MOR and compare it to the one from a year ago, you would see that our net sales are actually down about 22 percent from the same month a year ago; rather, the cash balance is a result of prudent, strategic decisions and stewardship. It's all the more impressive when you consider the extraordinary burdens of this case both, in soft and hard costs.

The complex underlying pharmaceutical business, which obviously has many products, not just OxyContin, as I have said a few times before over the last many months, often gets lost in our various discussions of Purdue as a Defendant or Purdue as a Debtor and the businesses, in fact, have been managed and then performed exceptionally well in the face of the truly extraordinary costs and enormous challenges of these Chapter 11 cases and, of course, the national climate and the pandemic, which has obviously resulted in our highly regulated, you know, factories and other facilities and even more extraordinary restrictions that, you know, were further had to be dealt with and addressed.

Number three, Your Honor, very briefly, on the PHI initiatives, just a quick update since we did turn the year-end, the Debtors have continued to progress their public health initiative since each was last discussed with the Court. We, of course, fully understand and has made clear many times that what happens with the Debtors' assets, post-emergence, including with respect to the scope and the costs of PHI initiatives is an issue whose precise contours are to be worked out with the relevant stakeholders, but while in Chapter 11, as we've also said many times, the company's job continues to be on a cost-effective way advancing these important public health initiatives so that decisions can then be made.

As a reminder, we were last before the Court on this topic on June 23rd, 2020, almost seven months ago. And since then, there have been, which I will very quickly tick through, a couple of -- several, actually, very important milestones. Number, with respect to Nalmefene, which is the medication intended to reverse opioid overdoses, the Debtors in December filed with the FDA, an abbreviated new drug application, known in the field as an NDA, for approval of the vial version, V-I-A-L, of Nalmefene, and the approval of the other forms, including the autoinjector, which I'm sure the Court remembers, we discussed at some length, are on track as well. The target submission date for the prefilled

syringe is May 2021 and the autoinjector target filing date is May 2022.

With respect to the Debtors' generic version of suboxone tablets, which is one of the leading, current opioid addiction treatments, the FDA approved the Debtors in March and as of May 2020, Purdue's generic suboxone tablets were manufactured and ready for shipment. So, that one is already at fruition.

With respect to the thing we discussed most recently, which is the HRT, low-cost, over-the-counter naloxone nasal spray, to take it out of the world of prescription and hopefully lower the cost dramatically for the whole country, really, this is the medicine that is similar no NARCAN and is intended to be used to reverse opioid overdoses.

One clinical trial is required by the FDA (indiscernible) approval. That actually commenced in September 2020, which followed the FDA's tentative approval of RIVIVE, R-I-V-I-V-E, as the trade name, in May 2020.

The target, new-drug application submission date for OTC naloxone is the third quarter of this year with approval and launch both expected in the year thereafter.

So, I am happy to report since we, as you know, and many others candidly think that these are extremely important medications, that PI is progressing on track.

The last topic, Your Honor, before we go to the agenda is where we are, you know, the end of exclusivity, other upcoming dates in the case and the status of mediation, which I will touch very lightly, but I think a couple of very quick updates are important.

Obviously, Your Honor, it's not lost on anyone dialed in this morning to the hearing that you ruled at our last hearing that the mediation will be concluding on January 31, which, at this point, is 11 days away and after that, of course, exclusivity, as the Debtors requested, ends on February 15th.

But February 15th is actually a critically important date in this case for a second reason, as well. The extraordinary injunction originally granted by this Court on October 11th, 2019, is currently slated to expire on March 1 and the deadline by which the Debtors have to file a motion to extend that injunction, with respect to either or both of the Debtors and the shareholder-related persons is in fact February 15th on the motion that we expect to be heard at the March 1 hearing at 10:00 a.m.

With respect to these issues, I think it's very important for the Court and all parties to understand that unless a settlement has been reached with the shareholders by February 15th or the Debtors believe that one will very soon be reached on or about that date, as I stand here today

it is very difficult for me to conceive of a circumstance in which the Debtors would, on February 15th, move to extend the injunction, with respect to the shareholder-related (indiscernible).

So, that brings us back to February 15th, which is 26 days from today. With respect to the mediation, as the Court and the parties are, of course, also aware, we are extremely limited, as we should be, by the confidentiality provisions and the mediation order we asked this Court to enter as to what we can report. That said, I don't think it's telling any tales out of school today that we are not currently where we need to be or, of course, I would be standing here today making a good news announcement and I am clearly not doing that.

We have 26 days until February 15th, and we are working as hard as we know how to on many, many issues with many parties. And on or about February 15th, we will, as we have been ordered to, as, of course, must because of exclusivity, file the best plan then possible, which we hope will have widespread support, even if it does not yet have complete consensus.

As Your Honor has told us again, and again, and again, including on June 3rd, July 23rd, September 30th, and December 15th, work hard to build consensus, but the Court understands the likelihood that everyone will be onboard

with all aspects as of any particular date, and that the Debtors need to take the conversations as far as they can, but also need to move the cases forward and not let the perfect be the enemy of the good.

I will cite only three examples for context and then turn the agenda over. On June 3rd, 2020, you said, and I quote:

"The parties in this case need to realize that the results in this case cannot be exactly what they want. Perfection is not achievable here... I want this case to move ... and one way to do that is to tell the Debtors we don't need consensus on everything."

On July 23rd, 2020, you said:

"I sincerely hope that that's an agreement that involves and includes all the mediation parties, but, again, having served in that role many times, I know that sometimes you can't achieve that. Maybe you get all but one, for example. I'm not expecting complete consensus ... so I would urge the parties, as I did last month, to put aside the perfect and agree on the good and move on with things to the next stage of this case."

And then, finally, and even in more direct context on December 15th, you said:

"The parties don't have to reach agreement, but I urge them to do their best to do so by January 31 on these

issues so that if possible, a settlement is reached on both the Debtor claims and potentially the third-party claims ... the parties simply need to conclude these negotiations so the plan can be filed because as we all know, every day that passes, some poor soul is not getting either the counseling that he or she needs or the treatment that he or she needs or a NAF baby is no longer a baby and their grandparents are not getting the help they need."

We will of course follow the Court's clear and consistent admonitions. Candidly, Your Honor, I don't know, as I stand here today, exactly what plan we will be filing. We have 26 days left and we know that the relevant parties will remain intentionally and fully engaged both, through the end of mediation on January 31, as well as the first two weeks in February.

But I can assure you, Your Honor, that we will file the best plan we can, based on where we are in the middle of February. With that, Your Honor, unless the Court has any questions, I would propose to proceed with the agenda.

THE COURT: Okay. Thanks for the update.

I don't have any questions. I don't know if there's anything that anyone, for example, the committee, wants to respond to or whether to just move on to the agenda. So, I'll pause for a moment if someone wants to

address anything that Mr. Huebner has not covered in his opening remarks?

(Pause)

THE COURT: Okay. Then, why don't we proceed down the agenda.

MR. HUEBNER: Terrific, Your Honor.

Item 1 on the agenda is a contested matter which is the Debtors' motion. I would ask my partner, Mr. Kaminetzky, if he would step up to the electronic podium and handle the motion to approve the insurance stipulation.

THE COURT: Okay.

MR. KAMINETZKY: Good morning, Your Honor. May I please the Court, Benjamin Kaminetzky of Davis Polk on behalf of Purdue, its 22 subsidiaries, and Purdue Pharma, Inc., its general partner.

Can you hear me all right?

THE COURT: Yes, I can hear you fine. Thanks.

MR. KAMINETZKY: So, Your Honor, I'll be addressing the Debtors' motion for the Court to approve the stipulation agreed order granting joint standing to prosecute the Debtors' insurance causes of action to the UCC and the ad hoc committee, which I'll refer to together as "the committees."

The stipulation represents an almost unprecedented occasion in these cases where relief has been requested

and/or supported by both estate fiduciaries, the Debtors, and the UCC, by the ad hoc committee, and by the non-consenting states group, whose statement in support is at Docket Number 2289.

I'll also be responding to the single objection filed by Ironshore Specialty Insurance, formerly known as TIG, one of the Debtors' insurers. I will refer to them as "TIG."

Now, consistent with the coordination and cooperation among the Debtors and the committees that the stipulation embodies, the committees have left it to me to present the argument on this motion and my colleagues from Akin and the Gilbert firm will step in only on rebuttal or, of course, if the Court has any questions specifically for one of them.

Your Honor, three sentences of context. Debtors and certain related parties are insureds, pursuant to over 100 insurance policies covering periods between 2001 and 2018 from over 30 insurance groups, which together provide over $3 billion of coverage limits for, among other things, product liability, general liability, and D&O liability. Aside from approximately $275 million that has been exhausted or is insolvent, this coverage remains unexhausted. The collective proceeds of this remaining coverage is a very large substantial asset of the Debtors'

estate to say the least.

Now, the stipulation reflects the Debtors' judgment that is in the best interests of the estates for the Debtors and the committees to cooperate and share responsibility for pursuing the Debtors' insurance proceeds, in which they all share a common interest. The Debtors and the committees, of course, hope to obtain these proceeds through consensual resolution with our insurers, but certain insurers have been unwilling to engage in productive negotiations.

Now, given that intransigence, the Debtors and the committees must prepare and be in a position to seek litigated relief. This stipulation accomplishes the goals of cooperation and coordination through the following means. Briefly, Your Honor, first it confers joint standing, so-called Housecraft standing on the committees, and authorized the committees jointly as co-Plaintiffs and co-parties with the Debtors to assert, litigate, and resolve any or all claims, causes of action, disputes, or other matters related to Debtors' insurance on behalf of the estates.

To be clear, the Debtors will share their standing with the UCC and the ad hoc committee. This is not STN and it's not Commodore; it's Housecraft. The Debtors and the committees are committed to cooperating and coordinating in regards to the Debtors insurance causes of action.

Importantly, Your Honor, nothing in this, as stated in the stipulation in recital J, nothing in the stipulation order shall predetermine the terms of a plan of reorganization or bind a post-emergence entity after the effective date of any plan of reorganization in these Chapter 11 cases; in other words, this stipulation does not address or affect who will have the authority to prosecute the Debtors' insurance causes of action after the effective date of the plan of reorganization and the emergence from bankruptcy, at which point, if the insurance issues are not resolved, (indiscernible) will transfer to the post-emergence entity in charge of pursuing any of the Debtors' remaining insurance proceeds.

Now, second, the stipulation states that the Debtors will not seek approval of any settlement related to the insurance causes of action without the consent of at least one of the committees and neither of the committees will seek such approval without the consent of the Debtors. The point of this provision, Your Honor, is to avoid disputes and minimize the need to any messy litigation over any proposed insurance settlement.

Your Honor, the motion, stipulation are a straightforward application of the Second Circuit's decision in Housecraft. Housecraft, as Your Honor well knows, confirmed that a Debtor, like Purdue here, may consensually

request, as we have done, that the Court vest committees of creditor or even a single creditor with joint standing to pursue estate causes of action alongside the Debtor, so long as it's in the best interest of the bankruptcy estate and necessary and beneficial to the fair and efficient resolution of the case.

No one, not even TIG suggests that the motion and stipulation are not necessary and beneficial to the fair and efficient resolution of the case. So, there's only one issue before Your Honor today, and that's whether it is in the best interests of the estates for the Court to confer joint standing to the committee under the terms of stipulation consistent with Housecraft and its progeny, so that the committees can coordinate and participate with the Debtors in pursuing the Debtors' insurance causes of action.

And we submit, Your Honor, that the answer here is easy and it's an easy yes. The proposed insurance stipulation sets up a cooperative framework and marshals the resources available to the estates, including the expertise of ad hoc committee's insurance recovery counsel in order to maximize recovery from the Debtors' insurance causes of action, while at the same time, minimizing any need of the parties to the stipulation to jockey for position, second-guess each other, or to litigate related insurance issues among the estate's key constituencies.

A single, focused voice aimed at maximizing recoveries is most certainly in the best interests of the estate. And arriving at an efficient process to pursue proceeds from the Debtors' insurance is critical to the fair and efficient resolution of these cases, as the Debtors' insurance represents one of the estate's most important assets, when faced with resolving over 600,000 claims filed by claimants asserting over $140 trillion in liability.

Your Honor, not one of the claimants that filed these 600,000 claims in these cases has objected to the Debtors' motion or second-guessed the judgment of the Debtors, the UCC, and the ad hoc committee, not one. The only party to object is TIG, one of the Debtors' insurers, and likely a future target of efforts to prosecute the Debtors' insurance causes of action.

TIG's objection to what really amounts to an administrative motion is understandably. It has only to gain from obstructing efforts to bring any proceeds from the Debtors' insurance into these estates and it is only TIG and not the estates themselves, as TIG attempts to suggest, that stands to lose if the motion is granted. That alone is enough reason to question TIG's argument that the stipulation is not in the estate's best interests, but most importantly, each of their arguments fails on its merits, as well.

First, TIG argues that the UCC, a committee, should not be allowed to participate in insurance disputes because the information TIG would seek in a dispute might increase Debtors' exposure to claims brought by the committee's constituents. Well, as Your Honor well knows, the information sharing in these cases between the Debtors and the committees has been extensive and extraordinary and that is even after the massive amounts of discovery on these issues and the thousands of prepetition lawsuits before we even entered this courtroom. So, the notion that discovery in an adversary proceeding regarding the Debtors' insurance causes of action would somehow expose the Debtors to additional exposure in a bankruptcy case with over 600,000 proofs of claim asserting over $140 trillion in liability is, respectfully, absurd.

Second, TIG argued that an ad hoc committee's involvement will not benefit the estates because claims of government creditors are not covered by insurance. Setting aside the fact for a moment that this is simply not true, that TIG's policies did not cover claims of government entities, which the Debtors and committees will be happy to address upon full briefing at the appropriate time, there is clearly a benefit to all creditors, including those represented by the ad hoc committee to increase the source of value available for distribution to other creditors, so

as to preserve their own share of estate value.

Third, TIG argues that the hourly rate of the ad hoc committee's insurance counsel is higher than the rate of the Debtors' insurance counsel; respectfully, this completely misses the point. The stipulation is not about legal-rate arbitrage. The point is that the Debtors will certainly have to pay for this work once and that all parties will benefit from coordination, so that the Debtors do not have to pay for this work twice or three times. This stipulation ensures that.

Fourth, TIG objects to a purported veto right that the committees have over any settlement by the Debtors. As discussed, Your Honor, the stipulation provides that the Debtors will now file a 9019 motion for improve an insurance settlement without the consent of at least one of the committees. This is designed to minimize the chance and expense of litigation among the estate's chief constituencies. This is a sound exercise of the Debtors' business judgment and was agreed to build trust and display a unit of purpose.

And, by the way, assuring insurers that a settlement is a settlement and not an opportunity to get salami-sliced by others in a contested 9019 process is, I think, a positive, not a negative.

Your Honor, at the end of the day, TIG opposes

this stipulation because it has a very significant interest in reducing any insurance recovery by the estates. Since the estate's best interests are contrary, this Court should approve this settlement.

So, the two elements of Housecraft are satisfied, and I could stop here, but, Your Honor, TIG attempts to cite that the straightforward application of Housecraft by arguing that general state law limits on creditor standing would somehow limit standing under federal bankruptcy law. This is fundamentally mistaken. Federal bankruptcy law, not state law, governs the question of which party or parties may bring an estate cause of action on behalf of a Debtor. And where federal bankruptcy law provides that another party may bring an estate cause of action, be it a trustee or a committee or a creditor that has standing, whether under state law, a creditor or committee would also have separate standing to bring the claim is simply not relevant at all.

Indeed, to be crystal clear, the committees do not contend that they currently have standing to pursue the Debtors' insurance proceeds, independent of the Debtor under New York, Delaware, or any other state's law. If the committee did so believe, the motion would be unnecessary.

It is therefore no surprise that TIG cites no Second Circuit authority that puts any state law constraints on Housecraft standing. Indeed, Judge Wiles over the summer

rejected any attempt to import state law standing doctrines into bankruptcy standing, and I'm referring to the McClatchy case that we heard in July that we included a discussion in our brief.

In that case, Judge Wiles explained that what a committee seeks to do under the STN trilogy is to be authorized:

"To act as the estate representative to pursue the claims that belong to the estate and to do so as a matter of federal bankruptcy law, not state law."

In other words, slightly paraphrasing Judge Wiles, and I'm again quoting, the committee is not asking the Court to permit a derivative claim under the authority of Delaware law or under other state law because, again, "the claims at issue here plainly belongs to the Debtors' estate and should be pursued on behalf of the estate."

Now, TIG relies on a few decisions from the District of Delaware, which appear to hold that a committee vested with standing to sue, sues not as the estate, but as a collection of creditors and, thus, only maintains suits that a creditor could maintain under state law. And I'm referring to the cases they cite, the Dura case, the HH Liquidation case, Citadel. But these decisions are simply inconsistent with the Second Circuit's STN, Commodore, Housecraft jurisprudence.

The Second Circuit makes clear that a party vested with standing is not prosecuting a cause of action that may prosecute it in its own name, but rather, is suing in the name of the estate by suing alongside with or stepping into the shoes of the Debtor.

Now, perhaps these decisions flow from the fact that the Third Circuit's Cybergenics doctrine is somewhat different from the Second Circuit's doctrine. Among other important differences, Cybergenics does not provide an analog of Housecraft. But, in any event, it's clear that these cases have no application to this case because the committees here would be sharing the Debtors' standing, just as a creditor in Housecraft shared the standing of the trustee.

And as a reminder, Your Honor, the Second Circuit in Housecraft went so far as to emphasize that:

"The case for recognition of a creditor's standing ... is more compelling, whereas here, the trustee or Debtor-in-possession, is also named plaintiff."

Second, TIG also conflates the concept of Housecraft standing on the one hand and attempts by a committee to intervene in a Debtors' cause of action in its own right under 1109(b), which provides that parties in interest have a right to appear and be heard. But the proposed insurance stipulation is not grounded on 1109, so

this entire line of TIG's argument is simply irrelevant and in addition to being irrelevant, it's also completely wrong.

It's clear under Second Circuit decision in Caldor in 2002, that even in the absence of the stipulation, the committees would undoubtedly have an unconditional right to intervene and to appear and be heard in every adversary proceeding involving the Debtors' insurance causes of action. And, further, because Caldor's holding does not draw the core/non-core distinction that TIG hopes to interject, TIG's attempt to raise and litigate that issue now as opposed to do and in connection with full briefing in an adversary proceeding regarding the Debtors' insurance causes of action is not only procedural improper, but it's just plain wrong.

Also, the allegedly, factually similar -- that's a quote -- case identified by TIG to support its position, that case out of Alaska, the Catholic Bishop case suffers from at least three defects. First, it did not involve a Debtors' consent to a committee gaining standing, but, rather, was addressing 1109(b). Second, the Court there, I believe it mistakenly conflated the interests of the committee with those of an individual tort claimant. And most importantly, in addressing Section 1109(b), the Court there expressly rejected Caldor, which is binding, Second Circuit precedent for the principle that a creditor has

unconditional rights to intervene in an action commenced by a Debtor and, instead, cited other Circuit's approach to intervention.

Your Honor, finally, TIG's express attempts to litigate the motion for relief from stay without notice in summary fashion in a paragraph is entirely improper and should be denied at this time without prejudice. Procedurally, this motion was never adjourned or re-noticed as direct by the Court at the January 24th, 2020, omnibus hearing, and TIG raising the issue in an objection to an unrelated motion certainly does not comply with the 21-day notice requirement that is required under the case management order for all motions to lift stay.

Substantively, as noted in the Debtors' reply, TIG's motion for relief from stay is still inappropriate for decision and should be denied. As foreshadowed by the stipulation and TIG's vociferous objection to it, it is likely to be very soon that the Debtors and committees decide to litigate in this court the claims TIG argues should be subject to arbitration.

When that happens, the parties to the proceedings will be able to fully brief and argue those important issues, but that day is not today.

In sum, Your Honor, it is clear that TIG has fallen well short of demonstrating that the stipulation is

not in the best interests of the estates and the silence and assent of each and every one of the creditors of these estates certainly speak much louder than the self-serving suggestion of a target insurer that it knows better than everyone else what is in the estate's best interests.

Accordingly, TIG's objection should be overruled in its entirely, the Debtors' motion should be granted, and the proposed insurance stipulation, among the Debtors, the UCC, and the ad hoc committee should be entered.

Your Honor, unless you have any questions, I would propose to turn the podium over to my colleague Andrew Troop, representing the non-consenting states, who I believe wants to be heard on this issue, as well.

THE COURT: Okay. Well, I do have one question, and I probably ought to hear -- well, I should definitely hear from you. I should also hear in anyone who's a party to this stipulation disagrees with your answer.

The Debtors' response to the objection by TIG, or T-I-G, relies largely and ultimately, perhaps entirely, on the concept embody in the Commodore and Housecraft cases, that when one is conferred standing under those cases, one has standing to bring the Debtors' causes of action on behalf of the estate, generally, the 541 estate.

And in reading the stipulation, paragraph I, which starts on page 3 defines the term Debtors' insurance causes

of action and, at least, based on the plain terms of the defined term, Debtors' insurance causes of action, it would appear clear to me that what the parties are agreeing to cooperate on and for which standing is conferred or joint standing along with the Debtor, ala Housecraft, are causes of action that belong to the Debtor.

The definition that precedes the defined term arguably could be read a little more broadly. It is any and all claims, causes of action, disputes, or other matters regarding the Debtors' insurance. And the authorization paragraph, paragraph 1 on page 4, says subject to the terms of the stipulation and order, the official committee and the ad hoc committee are hereby granted leave, and shall each have joint standing with the Debtors to assert, litigate, and resolve in each case, co-plaintiffs and co-parties with the Debtors, any and all claims, causes of action, disputes, or other matters regarding the Debtors' insurance causes of action on behalf of the Debtors' estates.

Now, I read that to mean in paragraph 1, particularly in light of the last clause, to be on behalf of the Debtors' estates and no one else. One could, I guess, argue that the cooperation provisions of this stipulation could also cover potentially actions that the two committees might have on their own, but I just want confirmation that that's not what's contemplated here. What's contemplated is

actions on behalf of the Debtors' estates, exclusively.

Is that correct?

MR. KAMINETZKY: One hundred percent, Your Honor. That is my intention and apologies if it's unclear. But it's a purely, you know, Housecraft, you know, they can jointly assert with us, (indiscernible) you know, the insurance causes of action that the Debtors have, it doesn't mean to expand or include anything else, other than the Debtors' causes of action.

THE COURT: Okay. I don't think it's unclear, but in my experience in insurance litigation, at times, perfectly clear language can be asserted to be unclear and I wanted the record to be clear that this stipulation pertains only to Debtors' estate causes of action or causes of action that belong to the Debtors and their estate.

And I mean assuming from the silence by the ad hoc committee and the official committee that that's their view, also.

MR. SHORE: Your Honor, this is Richard Shore of Gilbert, LLC on behalf of the ad hoc committee, and I can confirm that, as well, on behalf of the ad hoc committee.

THE COURT: Okay.

MS. BRAUNER: Good morning, Your Honor.

Sara Brauner, Akin Gump, on behalf of the official committee. We confirm it, as well.

THE COURT: Okay. Very well.

All right. That was my one question, and I am now going to hear briefly from, I think, the non-consenting or the ad hoc committee of non-consenting states. I believe that's who you were going to introduce, Mr. Kaminetzky, and anyone else in support of this motion, if they want to say anything more.

MR. KAMINETZKY: That's correct, Your Honor.

Mr. Troop has to say something in support and, as I mentioned, in the up front, unless Your Honor has specific questions, which, indeed, the committee and the official committee and the ad hoc committee was just relying on me, subject to any rebuttal.

THE COURT: Okay. Very well.

MR. TROOP: Thank you, Your Honor.

This is Andrew Troop, on behalf of the ad hoc group of non-consenting states. I hope that I am clearly audible.

THE COURT: I can hear you fine, thanks.

MR. TROOP: Thank you, Your Honor.

Your Honor, I will be brief. As Mr. Kaminetzky said, I think other than coming before you and asking for an adjournment, this may be the first time that the four major active groups in this case are here with a united view as to what is in the best interests of these estates, and to be

clear, the non-consenting states group not only believes it's in the best interests of these estates for the Debtors' insurance causes of action to be asserted, litigated, if possible, resolved now, but it is in the best interests of these estates for it to be done by this triad of parties.

They represent a broad cross-section. Two are fiduciaries. One, in particular, the ad hoc committee's lawyers are, you know, at the Gilbert firm, this is what they do and they do so well, efficiently, and always with the view towards what advances the best interests of the estate in the recognition that the monetization of the Debtors' insurance policies will, regardless of how this case resolves itself through a plan of reorganization, benefit all creditors.

We are supportive. We are also very -- we think, also, that the recognitions in the motion and in the statement of common interests that not only the Debtors' committee and the ad hoc committee have, but other committees have. We think that's absolutely right, and we are confident that the checks and balances put into the stipulation to ensure efficiency and voice are the right way to go here.

We are also convinced and can understand that we will be on the side parties in the sense of we are common interests parties, and we will be kept apprised and the

like, but no more lawyers were necessary, and no more representatives were necessary to achieve the goals here that everyone shares.

So, I won't repeat anything on the legal side, which Mr. Kaminetzky covered fully, but at its core, this stipulation strikes the appropriate balance to advance the Estate's interests at a time when it's important to do so and I would urge the Court to approve it. Thank you, Your Honor.

THE COURT: Okay. Thank you.

All right. I should have said this at the beginning. I've read the pleadings on this and having heard oral argument on behalf of the movants, I'm happy to hear oral argument on behalf of TIG, although, again, I have reviewed the pleadings from both sides.

MR. CALHOUN: Good morning, Your Honor.

This is George Calhoun of Ifrah Law on behalf of Ironshore Specialty Insurance Company, formerly known as TIG Specialty Insurance Company. I also have Josh Wirtshafter of Kennedys, who's counsel in the pending arbitration.

Can you hear me okay, Your Honor?

THE COURT: Yes, I can hear you fine, Mr. Calhoun.

MR. CALHOUN: Okay. Thank you, Your Honor.

So, I know you've read the pleadings. I won't repeat what's in there, but I did want to respond and

address to some of the points raised by counsel for Purdue. First, I appreciate the clarification that they're relying strictly on Housecraft, not on 1109(b). Housecraft is, obviously, a controlling Second Circuit decision and depending on how Your Honor interprets it, it's either not applicable or there's a Circuit split, or a third possibility is it's got to be simply applied and find that there's a -- it's not in the best interests of the estate and let me explain why.

Housecraft dealt with an avoidance action under Section 548 and in that case, the creditor in that case, BMT, funded the litigation that the trustee otherwise could not undertake, and so it provided a clear benefit to the estate's causes of action, otherwise it would not have been brought at all. So, Housecraft, so that situation is completely different than this case where the Debtor is proposing not only to pay its counsel, but two other sets of counsel to pursue an estate cause of action.

Housecraft is also not applicable here, Your Honor, because it didn't direct at all in that case where there was a controlling state law that says that this type of action could not be brought by the third party. Housecraft doesn't necessarily purport to override such state law. There's nothing in the Bankruptcy Code that pre-empts state law that says a creditor or a group of creditors

can bring a cause of action against an insurer, which they concede they can't. But it's not the case that there's any sort of express preemption or even applied preemption because they haven't shown any inconsistency here. And, obviously, this is not STN where they've made a demand and haven't been able to pursue it. So, I think those on points, Housecraft just doesn't apply. It's a different situation. There's no need to create a Circuit split between the Second Circuit and the Third Circuit.

THE COURT: Well, what's the Third Circuit split? I'm not clear on that. Are you referring to the Delaware Bankruptcy Court cases, obviously, those are not Circuit-level cases.

MR. CALHOUN: No, but as Debtors' counsel referred to, it's just a different level of how they apply these principles. I don't know that the Third Circuit objected (indiscernible), but it's going to get to that issue.

THE COURT: I guess the other point I would ask you about is the Court in Housecraft, and, of course, it's part of a trilogy, dealt with a statute, 548 of the Bankruptcy Code, which, specifically, confers standing on one party, the trustee or Debtor-in-possession.

To me, that's not also any specific issue of or raising any sort of issue that would involve preemption principles. It involved standing principles; i.e., a party

can take the place of and step into the shoes of a trustee or Debtor in possession under a particular statute to assert the Debtors' rights and I'm not sure that there is any real distinction there between a federal statute and a state statute.

It's really a question of who, as a fiduciary, under the ultimate supervision of the Bankruptcy Court, can act on behalf of the Debtor and its -- estate.

MR. CALHOUN: Correct, Your Honor.

And what the Second Circuit said in Housecraft with that, if you look at that question, you have to consider what's in the best interests of the estate and --

THE COURT: No, I understand that, but I think one would have to admit that the target of potential litigation is probably the least likely person to listen to, as to what's in the benefit of the estate, as opposed to the Debtor and fiduciaries, or tens of thousands of creditors.

MR. CALHOUN: I understand that, Your Honor, and, obviously, you can factor in that issue, but as counsel for an insurer, we do feel strongly that our coverage litigation should be with our insurer and not with lawyers for the creditors. It does create (indiscernible) and this really gets into some of the things I want to talk about on that issue, on best interests of the estate and the problems that this causes.

I'd just note from the outset, counsel for the Debtors, at one point in his presentation, made the comment that some of the insurance companies were trying to obstruct relief and were (indiscernible) that they were delaying. I just wanted to point out that, you know, we asked Your Honor nearly a year ago for relief from the stay to pursue our insurance coverage action and the Debtors approached us in July and said, hey, would you like to negotiate?

We said, yes. We didn't hear anything back from them again until October when they ignored a response and said would you like to negotiate?

We said sure, but if it doesn't work out, we'd like to get relief from stay to finish resolving these issues. So, we have absolutely not refused (indiscernible); it's been the opposite. (Indiscernible) impatient while we've been waiting for some further resolution and the Court directed at our motion at our hearing on the motion for relief from stay.

Something else that was said in terms of the presentation that is really critical, they said there should be a single voice, but what they're really asking for is three voices. They're asking for other groups to represent not the Debtors' interests or the insured's interests, but the interests of creditor groups. And, certainly, to the extent they had a settlement or something of that nature,

those parties are going to have the right to weigh in and we understand the desire to build consensus on that and don't really have a problem with that, but we do have problem with having three parties in our litigation multiplying the litigation, which is not in the estate's best interests; It's going to multiply the amount of work that's required. There's been no allegation and there's no contention that the Debtors don't want to maximize their -- the value of their insurance. They're represented by one of the largest and career insurance groups in the country at Reed Smith.

And if we have three parties in our case, the other half is another issue, as much as we'd like this done as soon as possible, I have serious doubts, Your Honor, that an insurance litigation is going to be finished before this confirmation.

We're going to then have parties and the litigations who represent committees that will be most likely dissolved. I know the stipulation doesn't control the issue of what happens but that creates a very serious concern about delay and problems in our ensuing coverage litigation.

In fact, Your Honor, just -- I don't see the benefit, on a cost benefit or any other basis, to create those future problems in litigation when the Debtor's perfectly competent and willing to step in and do this.

We have no problem if they consult with the committees, but the committees don't need to be parties. The committees being parties, not to represent the estate's interests, but to represent their own, which is what they're saying. They're there to represent the interests of all these creditors. It's what's been alleged in the papers and it was what was alleged today.

There's no need for it in this case. The Debtors have -- are perfectly capable of funding this litigation. They're perfectly capable of pursuing it.

It's -- you know, we're happy that they can reach consensus with these groups on something. I'm sure they're -- that can aid in their discussions but it -- it's got nothing to do with it -- with the pursuit in this litigation in an effective manner and efficient manner which is in the estate's interests.

Which is why we raised our pending lift stay motion. We're happy, Your Honor -- we recognize that either way there's some response and not on notice. We're happy to file a notice and have this heard.

We frankly were waiting and hoping that there'd be some resolution or remediation before (indiscernible) this motion prompted it.

And so, Your Honor, we think --

THE COURT: That's the problem with telephonic

hearings. I can't -- you have more to say, I guess.

MR. CALHOUN: No, go ahead, Your Honor.

THE COURT: No, no. I thought you might have been done because there was a pause. But you were just catching your breath.

MR. CALHOUN: Yeah. I was -- I was just looking at my notes because they're a little bit scrambled. But, yes, Your Honor, you know, so in short, we think there's good reasons here not to interfere with the state law standing requirements that would ordinarily -- ordinarily would preclude these third parties from participating in this litigation where there's no need to have them in there from a funding or from a motivation standpoint.

It avoids any conflict with state law or between other districts and circuits and, frankly, Your Honor, if the term sheet that's proposed is incorporated into the plan and that plan is confirmed, these creditor parties are going to replace the Debtor down the road anyway and, you know, that might be a more appropriate time to deal with that issue.

THE COURT: Okay. Then you wouldn't raise (indiscernible) cases then?

MR. CALHOUN: (Indiscernible) I can answer -- no, Your Honor. What I'm saying is if what they really want is to control the insurance litigation, if the plan proposes

that creditors become the new owners of the company, which is my understanding of what was proposed, when they become the new owners of the company, they'll be in control of their insurance litigation.

THE COURT: Okay.

MR. CALHOUN: They're really sort of prejudging that issue by asking that the -- not co-counsel for the estate, but joint parties is what they're asking for, Your Honor. They're not asking, let's have one voice on behalf of the Debtors in this insurance litigation. Let's have three voices which is not quite the same thing.

THE COURT: Okay. Very well. Anyone else have anything more to say?

MR. SHORE: Your Honor, Richard Shore on behalf of the ad hoc committee and just very, very quickly.

Mr. Calhoun said that -- that the Debtor and the two committees reached out to take -- regarding settlement to take -- said, sure, you know, let's sit down and they didn't hear back from us.

What Mr. Calhoun left out is the take place, the condition, on its willingness to sit down with us which was that we agree or the Debtor agree that any disputes regarding insurance coverage be resolved through arbitration.

Obviously, that was not an acceptable condition to

proceeding with settlement negotiations.

Mr. Calhoun also said that -- and I should say, you know, more broadly, we did seek to negotiate with all of the insurers to enter into settlement negotiations. They would have got little, not no, but little traction.

We think approving the stipulation and allowing the Debtor and committees to initiate litigation will focus the insurers on the need to resolve the coverage issue, enhance prospects of settlement and, to the extent that we can't settle during the bankruptcy case, we'll start this -- this -- the insurance disputes on the road to judicial resolution sooner rather than later. So we think that's very important.

And then, finally, Mr. Calhoun said that it was unlikely that the litigation would be resolved during the bankruptcy case. That, in our view, is a reason to approve the stipulation, not not to approve it.

It would create approving a stipulation allowing the committee -- the committees and the Debtor to work together in coordination now, will create a smooth transition to what happens, post-confirmation.

THE COURT: Okay. Thank you. All right.

I have before me a motion by the Debtors in these cases for approval of a stipulation between the Debtors and, on the one hand, and the official unsecured creditors

committee and the ad hoc committee of governmental entities, of states and governmental entities, that is -- which I will refer to as the ad hoc committee.

With respect to the Debtors' insurance causes of action, the Debtors are parties to many difference insurance policies and, as often happens in bankruptcy cases involving rights to insurance, as well as outside of bankruptcy, there appear to be disputes or potential disputes between the Debtors and their insurers about the extent of coverage under those policies.

The stipulation is brief and provides, first -- so the terms of the stipulation are that the two committees are granted leave and shall have joint standing with the Debtors to assert, litigate and resolve any and all claims, causes of action, disputes, or other matters regarding the Debtors' insurance causes of action on behalf of the Debtors' estates.

It is, I believe, clear, in particular because of the last clause of that paragraph one of the stipulation but also based on the representations made on the record today, that standing and the stipulation as a whole pertains to only the Debtors' estates' causes of action in respect of their insurance policies.

The committees acknowledge that they currently do not have their own causes of action in respect of the

insurance policies; i.e., they don't have direct action rights at this time and they're not under the stipulation being conferred direct action rights or such standing or even derivative standing but, rather, if I granted the stipulation, standing along with the Debtor, in each case, on behalf of the Debtors' estates with respect to the Debtors' insurance causes of action.

The stipulation also prescribes when the Debtors can seek approval of a settlement of causes of action and prescribes the rights of the two committees and prohibits their ability to seek approval of any settlement of the insurance causes of action without the Debtors' consent.

That's in paragraph two of the settlement and then finally in paragraph three of the settlement provides that the parties, that is the Debtors and the two committees, shall confer and work cooperatively regarding litigation of the Debtors' insurance causes of actions and the parties shall endeavor to make all decisions by agreement among the parties subject to applicable law.

Given that paragraph and the representations in the Debtors' reply to the sold objection to the motion, which is by one of the insurers, Ironshore Specialty Insurance Company, which people have been referring to in this matter by its former name, T-I-G or TIG Specialty Insurance Company, they will work cooperatively to proceed

with any litigation efficiently from the perspective of the Debtors' estate and, of course, will also obviously work cooperatively because they need to, under paragraph two of the settlement, with regard to any settlement negotiations.

The Second Circuit has well developed case law on the conference of standing on third parties where standing is, by statute, conferred only on the trustee or a debtor-in-possession, where the conference of standing would permit the third party to have standing to pursue estate causes of action; i.e., causes of action on behalf of the debtor in respect of its property and estate.

Starting with Commodore International Ltd. V. Gould (In Re Commodore International Ltd), 262 F3d. 96, 100, (2nd Cir. 2001) and proceeding thereafter to Blinka v. Mirrored Industries USA, Inc., In Re Housecraft, Inc., 310 F3d., 64 (2nd Cir. 2002), the circuit has recognized that where a trustee or debtor-in-possession with standing by statute to pursue an estate cause of action or an estate property right, agrees or consents to conferring that standing on a third party, the court will grant that standing and approve that agreement if doing so is (a) in the best interests of the debtor's estate and (b) necessary and beneficial to the fair and efficient resolution of the bankruptcy case or proceeding.

In Housecraft, the Second Circuit recognized joint

standing; i.e., standing on behalf of both the debtor and a third party at the same time to pursue estate causes of action and that is what is being proposed here as well.

No creditor of the estate has objected to this motion and, indeed, the three groups collectively representing essentially all of the creditors, affirmatively support the motion; that is, the two parties who are parties to the stipulation along with the Debtors, the official committee of unsecured creditors and the ad hoc committee. And, in addition, the ad hoc committee of so-called non-consenting estates affirmatively support the motion as, of course, do the Debtors.

The only party objecting to the motion is one of the potential litigation targets, TIG, an insurer. In the Housecraft case, the circuit noted that where the debtor is remaining as a party to a litigation and consenting to joint standing, the court is well within its discretion to be differential to that decision.

I believe that's particularly the case where all of the key parties-in-interest in the case with an economic stake in maximizing insurance proceeds recovery agree as well to the conference of standing.

The objection asserts a few bases in support of that objection. The first is that the grant of standing might confuse or otherwise impair the Debtors' estates'

rights in respect of the Debtors' insurance claims.

The argument is that under applicable state law, only the Debtor would have the ability to pursue these causes of action at this time.

Of course, that is also the case or was also the case in the Housecraft and Commodore cases with the exception that the applicable statute there was a section under Chapter 5 of the Bankruptcy Code that conferred standing specially on the trustee or debtor-in-possession.

Nevertheless, the courts, as I have noted, accorded standing to third parties to act on behalf of the Debtor's estate.

The same logic, to my mind, would apply wherever a third party would be acting literally on behalf of the debtor's estate whether that cause of action be under state or federal law.

The objector points to three or four cases decided by the Bankruptcy Court for the District of Delaware as authority for the contrary position that, in fact, the two committees even if accorded standing to pursue the cause of action would, in fact, not have such standing.

I have read those cases carefully and I believe they are distinguishable and not, in fact, contrary to the grant of standing here under paragraph one of this proposed stipulation and order.

Perhaps the clearest example of that is the most recent of those cases, In Re Citadel Watford City Disposal Partners, 603 B.R. 897 (Bankr. D. Del. 2019). In that case, pre-bankruptcy -- I'm sorry, during the bankruptcy case, before confirmation of the Chapter 11 plan, the official creditors committee was accorded standing to bring estate causes of action.

Under the plan, the liquidation trustee was given that status as the debtor's successor.

Nevertheless, the official committee brought the litigation as a derivative matter for breach of fiduciary duty claims under Delaware's Limited Liability Company Act, or Limited Partnership Act.

Later, the liquidation trustee sought to modify the caption of the case to include the liquidation trustee as a plaintiff or the plaintiff, as a plaintiff rather, asserting that this was just a procedural matter and of not substantive import.

The court, Judge Kerry, in analyzing two prior decisions by his colleagues, which I'll get to in a moment, concluded, under the plain terms of the Delaware Limited Partnership statute, that as of the time that the litigation was commenced, the plaintiff did not have standing to bring the cause of action.

At that time, when it was commenced, the official

unsecured creditors committee was the plaintiff and it was bringing the action on a derivative basis which the Delaware statute precluded.

The court, I believe, was clear that the liquidation trustee was taking the standing, at that point, as an assignee of the liquidation -- of the unsecured creditors committee and concluded that the liquidation trustee also did not have standing. Id. at 901 thru 902 as well as 907.

The court's whole focus was on derivative standing, not standing as conferred by the Bankruptcy Court to bring causes of action on behalf of the estate but rather derivative standing under Delaware law.

That was also the focus in the two cases that Judge Kerry construed, Judge Gross's case, In Re HH Liquidation, LLC, 590 B.R. 211 at 284 through 85, (Bankr. D. Del. 2018) and In Re Pennysaver USA Publishing, LLC, 587 B.R. 445, 467 (Bankr. D. Del. 2018).

In each of those cases, the courts were focused on the bringing of derivative claims for breach of fiduciary duties owed to creditors of either -- of a limited liability company in that case as opposed to an LP in the Watford City case.

The whole focus was on derivative standing, not on direct standing, as conferred by a court order which the

courts did not discuss at all.

I believe if that issue had been raised and focused on by them, they would have reached the same result which is that this was an action, if it could be brought by the company, would be brought by the company and its successors as opposed to someone suing derivatively in the name of the company which was precluded by the Delaware statutes.

I believe, therefore, that there would be no impediments to standing here in a litigation that would name the Debtor and the two committees as co-plaintiffs in each case, acting on behalf of the Debtor.

Of course, if some court disagreed with that analysis, although arguably it would now be collateral estoppel as to TIG, since it's actually been litigated, the solution would be simple. You would drop the two committees and continue on with the Debtor or its successor under a plan.

But that limited prospect, in my view, is no reason to deny approval of the stipulation as not being in the best interests of the estate.

The objection also argues that, as a cost and case management matter, the stipulation is not in the best interests of the estate. Again, I believe that the Debtor has a low bar to meet here given that it would remain a

party to a litigation and given, in addition, the lack of an objection by anyone except a potential target of the litigation.

The other prong of the test bears a little more scrutiny than that, however, i.e., the prong that requires the conference of standing to be necessary and beneficial to the fair and efficient resolution of the bankruptcy proceedings.

TIG argues that it will now be confronting three plaintiffs potentially instead of one and that would multiply the conduct of any litigation and unnecessary -- and unnecessarily complicates settlement discussions.

I've considered that argument carefully; first, whether the focus should even be on the other party to the litigation as opposed to the conduct of the bankruptcy case generally but even putting the focus on the former point, as opposed to the later one, which I believe is probably not the right result, but I will do it anyway, it appears clear to me that in respect of settlement discussions and the settlement process, in the context of this particular case, having the two committees with standing to particulate in settlement discussions under the construct of paragraph two of this stipulation is beneficial not only to the estates generally but also to the other party to those settlement discussions; i.e., the insurer.

In this case, the Debtors have been clear, from the start, and this is far from the norm in Chapter 11 cases, that they, in one form or another, will make all of their assets, including their insurance assets, available for their creditors.

The creditors, as a practical matter, therefore, in their views, are of high importance in the Court's determination as to the approval of any settlement, directly involving the two committees therefore in settlement discussions will cut short any further attack on a settlement or litigation over a settlement, or further negotiations to improve the terms of a settlement, previously negotiated by the Debtors because the key parties-in-interest are actually there with standing to participate directly as a party with standing in the settlement process.

As far as litigation is concerned, it is clear from paragraph three of the stipulation as well as the representations made in support of the motion that the parties, as they have done here, will coordinate their efforts so that I do not expect, and I believe it would be perfectly incumbent upon a court or an arbitration panel to so limit if my expectation is not followed by the Debtor and the two committees to prevent unnecessary duplication of argument and discovery and any other aspects of the

litigation that would be unduly burdensome and costly to the defendant in that litigation.

As was the case here, the Debtors' counsel spoke on behalf of the three parties. They coordinated on a joint reply and I'm assuming that they would do so in similar fashion with regard to any litigation pleadings and the conduct of litigation hearings so that you would not have, for example, three different parties standing up and objecting to the admissibility of any particular exhibit or question of a witness or the like. But that they would coordinate those to be efficient.

I think a trial court would have -- be well within its rights to rein in contrary behavior if it occurred notwithstanding paragraph three of the stipulation.

So, it does not appear to me, even I were focusing primarily on the insurers here, and their interests in fair and efficient resolution of the bankruptcy proceedings, as opposed to the fair and efficient resolution of the proceedings generally, to conclude that this motion should be denied.

To the contrary, I believe it should be granted.

I also believe it should be granted because I see no reason for any delay in resolving the Debtors' insurance claims and rights before confirmation of a plan.

Of course, the plan itself can modify again who

would have standing to pursue those claims and rights on behalf of the Debtors' estate but there's no reason to wait for confirmation of a plan to continue with the process that's thus far has been, it appears to me, rather desultory but now with the approval of this motion, I believe, will gain speed along with seriousness given the joint involvement of the two committees.

So, I will grant the motion and Mr. Kaminetzky you can email me the proposed order. You don't need to formally settle it on Mr. Calhoun but you should copy him on the email so he can make sure it's consistent with my ruling and doesn't change anything as far as the stipulation is concerned.

MR. KAMINETZKY: Thank you, Your Honor.

THE COURT: There -- as noted, there's no motion currently before me scheduled for a hearing for relief from the automatic stay by TIG, Of course, with proper notice, I would hear such a motion although I would hope that, at this point, now that the lines of authority are clear, the parties will engage in trying to resolve these issues before sending them to litigation, whether that would be in this Court, in a district court or in an arbitration.

So I think that concludes this matter and we can move on to the next matter on the calendar.

MR. KAMINETZKY: Yes, Your Honor.

Again, Ben -- Benjamin Kaminetzky. I'm going to turn the virtual podium over to my colleague, Jim McClammy for items two and three on the agenda.

THE COURT: Okay.

MR. MCCLAMMY: Good morning, Your Honor.

Jim McClammy of Davis Polk on behalf of the Debtors.

Items two and three are the motions that were brought pro se by Ms. Deborah Clonts; one motion for claim payment and that, two, a motion, and amended motion for the lifting of the automatic stay.

I believe I see that Ms. Clonts is on the phone.

THE COURT: Right.

MS. CLONTS: Yes, I'm here.

THE COURT: (Indiscernible) what I was about to say. So Ms. Clonts, you're here. You're representing yourself; is that correct?

MS. CLONTS: Yes.

THE COURT: Okay. And it's C-L-O-N-T-S.

MS. CLONTS: Yes, that's correct.

THE COURT: Okay. So I have reviewed your motion for payment as well as the motion and amended motion for relief from the automatic stay.

MS. CLONTS: Your Honor, if -- uh-huh.

THE COURT: So I just want to let you know that I

have reviewed those as well as the Debtors' objections to them.

MS. CLONTS: Uh-huh.

THE COURT: But if you want to say anything more in support of those motions, you could do that now.

MS. CLONTS: Okay. Before I was making a claim for an exception. It wasn't just claim payments. That's why I was motioning for the lift of stay or I'm not sure because, you know, clearly I'm not an attorney.

But I'm not sure if it's called the lift of stay or relief.

THE COURT: Either term is fine. Relief from the stay or lift of the stay.

MS. CLONTS: My term is fine?

THE COURT: Yeah.

MS. CLONTS: Okay. Yeah. So that's what I was -- that's what I came to argue was the crime fraud exception and if that's okay, I will -- I will continue with that.

THE COURT: Well, again, I've read -- I've read your pleading. So it's okay for you to continue with, you know, to make an oral argument, too, or you can just rest on the pleading; either one.

MS. CLONTS: Okay. And to be clear, I didn't -- I have no idea that the UCC was working on this when I started this, just to be clear. I wanted to state that.

It started with me seeing someone file a motion for a claim payment and I just thought, that's easy. So I filed one. And then I was issued a hearing and while I was researching for that hearing, I stumbled across the crime fraud exception and I thought, well, that sounds easy. Perdue just pled guilty to fraud.

So I went ahead and filed the crime fraud exception. It seemed like an open and closed case.

So I motioned for the lift of automatic stay because, as I understood it, that's what you had to do to invoke the crime fraud exception. It seemed justified.

And with Perdue's strategic and well planned bankruptcy, it just seemed that Perdue and the Sacklers were trying to save billions of dollars in litigation and they could afford excellent attorneys and I just -- I just thought that that didn't seem fair and it seems, to me, that the attorneys are the only ones making any money in this. The victims are -- are not getting paid and, when they do get paid, it seems that it'll just be pennies on the dollars.

So the Sacklers breached their fiduciary duty by transferring huge amounts of money anticipating litigation. They transferred it out of Perdue to overseas trusts in an attempt to hide assets from creditors.

So that was their -- qualified for their fraud,

crime fraud exception.

Perdue also pled guilty to fraud all the way back to 2007 and now 2020. Their aggressive marketing tactics, the -- the thing that you were just talking about, the derivative fiduciary duty, that qualifies for that.

The directors also failed and breached their fiduciary duty when they knew the company employees were breaking the law and they permitted it.

My damages, most importantly, are the -- is the loss of my daughter and up and down the docket is all, you know, many, many documents and many, many exhibits. You know more than I do because you've probably seen the unredacted ones.

And they have been before Congress, taken responsibility, full accountability for everyone to see. And I just believe that when the law for this is applied to this case that it brings it to the level of meeting the burden for crime fraud exception.

Thank you, Your Honor.

THE COURT: Okay. Thank you. And, again, Mr. McClammy, I've read the pleadings on this. So you should assume that but I'm happy to hear brief oral argument if you want to do that or you can rest on the pleadings.

I think you may still be on mute, Mr. McClammy.

MR. MCCLAMMY: I'm sorry about that, Your Honor.

Thank you.

I think unless there are specific questions that Your Honor has for the Debtors, we will rest on our pleadings and simply reiterate, as this Court is aware, you know, the import of the stay to these cases and moving them forward and the fact that the Debtors and the other constituents in this case, you know, remain very much focused on bringing these cases to a conclusion for the benefit of all the -- all of Perdue's creditors and the public in general.

But, again, if Your Honor has specific questions, happy to answer those.

THE COURT: Okay. That's fine. Thank you.

All right. I have two motions before me by Ms. Clonts, each of which is opposed by the Debtors in these Chapter 11 cases.

The first motion is a motion for payment of Ms. Clonts' claims in these Chapter 11 cases.

There were four claims filed by her and they're each entitled, if allowed, ultimately to payment from the Debtors' estates. The claims are unsecured and they're pre-petition claims; i.e., claims for harm that occurred to Ms. Clonts based on the death of her daughter before the start of these bankruptcy cases.

Ms. Clonts is not the only person who has filed

such claims in these cases. In fact, there are tens of thousands of such claims filed against the Debtors unfortunately for the claimants as well as claims by almost all of the states in the United States, thousands of other governmental entities and Indian Tribes, insurers, hospitals, and other non-individual entities.

The amount of claims filed in this case, the dollar amount is staggering and the Debtors, with the official unsecured creditors committee, which is the fiduciary for all unsecured creditors, and the ad hoc committees in these cases, representing the states and other governmental entities, as well as specific types of claimants, such as the ad hoc committee of NES babies, and insurers, have been addressing, since the start of these cases, how to distribute to all of the claimants the maximum amount of value that can be distributed.

The first motion, as I said, seeks payment now of Ms. Clonts' claim. She acknowledges that she saw a similar motion made earlier in these cases by a claimant, like herself, who tragically lost a child and believed that making such a motion and the grant of such a motion would be relatively simple.

However, the grant of such a motion runs contrary to a fundamental principle of bankruptcy law, which is why I denied the prior motion; namely, it is highly unusual,

unless there's a net benefit to the other creditors, to pay a pre-petition, unsecured claim before similarly situated claims are paid.

The fundamental principle of the Bankruptcy Code is to prevent some creditors from getting a leg up over other creditors in the treatment of their similar claims but, rather, to have that treatment apply to all claims under, in the case of the Chapter 11 case, a Chapter 11 plan, that is negotiated as the Debtors have been negotiating with key fiduciaries for creditors and then ultimately proposed, on notice to everyone, and confirmed or not by the Bankruptcy Court.

It would unduly prefer Ms. Clonts over the other claimants to grant her motion now for payment and, therefore, I will deny the motion.

I will similarly deny the motion for relief from the stay which, to the extent it doesn't seek immediate payment, would seek the ability to litigate the unsecured claim that Ms. Clonts has filed in a non-bankruptcy forum and I believe then, at least reading between the lines of the motion, have it be paid.

Again, it is rare to have relief from the automatic stay under 362(a) of the Bankruptcy Code to pursue litigation of a pre-petition claim even without having it be paid, just to have it be litigated unless unique

circumstances apply such as the litigation is fully insured, or the litigation is very far advanced and it would be more efficient to have the claim be litigated in the forum that has been presiding over the matter or the like.

The factors applied by the Second Circuit in the In Re Sonnax Industries case, none of those factors applies here.

Ms. Clonts has stated, and I appreciate she's not a lawyer, that she believed that a so-called crime fraud exception would provide for relief from the automatic stay here and noted that the Debtors, Perdue, have already pled guilty to certain crimes in the District Court of the District of New Jersey during the course of these cases.

However, there was no such general exception or exclusion from the automatic stay provided for in the Bankruptcy Code. Section 362(b)(4) provides that certain sections of the automatic stay do not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police and regulatory power including the enforcement of a judgment other than a money judgment obtained in an action or proceeding by the governmental unit to enforce such governmental unit's police or regulatory power.

But, by its plain terms, that exception to the automatic stay applies to governments, to governmental units

and would not apply to an individual such as Ms. Clonts.

Her motion also references a claim that her claim would not be subject to any discharge in this case under Section 523(a)(2) of the Bankruptcy Code.

Again, I recognize that Ms. Clonts is not a lawyer but there are two points to make here. First, actions for a declaration that the bankruptcy discharge does not apply to a particular debtor under Section 523(a) of the Bankruptcy Code are normally brought by an adversary proceeding rather than a motion like this.

But, more importantly, by its plain terms, Section 523(a) of the Bankruptcy Code applies only to discharges of individual debtors; i.e., people as interpreted by the Second Circuit as the Second Circuit interprets the term individual debtor.

These Debtors are not people. They're corporations and other legal entities. For such entities, Congress has a far more restrictive limitation on a discharge. It is set forth in Section 1141(d)(6) of the Bankruptcy Code. It says that notwithstanding paragraph (1), which is the general discharge provision for corporations and entities other than people, the confirmation of a plan does not discharge a debtor that is a corporation from any kind -- from -- of a kind of a debt specified in paragraph (2)(a) or (2)(b) of Section 523(a)

that is owed to a domestic governmental unit or owed to a period as the result of an action filed under Subchapter 3A of Chapter 37 of Title 31 where a similar state statute which, in essence, is a type of statute that lets a person step into the shoes of a governmental unit like a whistleblower statute.

Again, Ms. Clonts is not a governmental unit and doesn't fall into that exception.

So, Ms. Clonts, I understand fully that you would like to have some payment from the Debtors' estate as soon as possible. That payment, however, cannot come ahead of payments to (indiscernible). They should be made together once your and their claims are allowed.

The parties have been negotiating a process, a structure for reviewing claims like yours, and considering whether they should be allowed in a way that's efficient and cost effective for people like yourself as well as the Debtors that tries to minimize lawyer involvement, for example.

Those sorts of procedures have been adopted in many cases where there are claim like yours and I am assuming that if and when a plan is confirmed in this case, such a procedure will be part of it and your claim will be reviewed and whether it be allowed or disallowed or reduced, but once that happens, there will be distribution on it as

that -- and that that same process will apply to everyone else who has filed a claim like yours.

But that process is a collective one. An enormous number of people are affected by these cases and it has taken as long as we have taken in this case to get to a point near to which such a plan can be filed and confirmed.

If the Debtor warrants a discharge, if that plan is a truly organization plan as opposed to a liquidation plan, then the Debtor will get a discharge except to the extent it is asserted it is not entitled to one under the section I just read from, Section 1141(d)(6).

But, again, that applies to governmental units, i.e., the states and other governmental entities if they want to pursue that type of relief.

But, at this point in the case, while people are still dealing with the ultimate structure of a plan, and the resolution of all of the Debtors' estates' claims against third parties, including claims for alleged avoidable transfers, which you have referred to, i.e., transfers of value out of the Debtors for less than fair value or fair consideration, where the Debtors were insolvent or the like.

But, again, that needs to be resolved before there can be distributions to creditors. And I can tell you that the tea parties in this case, whether they be the Debtors, the creditors committee or the ad hoc committees of the

states and governmental entities and other ad hoc committees, I believe have been doing their utmost to resolved those issues as promptly as they can. And I have been doing my utmost to make sure that they focus on that process in a way that takes into account the risks that they face of not reaching an agreement on the process and the rewards of either reaching an agreement or not reaching one.

I believe that that process is coming to a close. I set a deadline on it. And I am looking at I hope a largely, if not entirely, consensual plan before the spring and confirmation in the spring of this year.

We'll see if that can happen. But I cannot move the process any faster than it is moving at this point.

So I will ask Mr. McClammy to submit an order to chambers denying both of the motions. That order will make it clear that it is not not denying or disallowing your underlying claims. You file those claims and they will be dealt with under a plan.

MR. MCCLAMMY: We will take care to submit that order, Your Honor.

MS. CLONTS: Thank you.

THE COURT: Okay.

MS. CLONTS: Thank you. Thank you, Your Honor. I'm so sorry that I had -- I got involved in this and I didn't know what to do. I didn't know --

THE COURT: No. There's no reason --

MS. CLONTS: -- you know --

THE COURT: -- there's no reason to -- ma'am, there's no reason to apologize at all.

MS. CLONTS: Okay.

THE COURT: This --

MS. CLONTS: All right.

THE COURT: -- is -- these are complicated issues.

MS. CLONTS: Uh-huh.

THE COURT: The Bankruptcy Code is something that lawyers work with their entire career and they still learn new things that are in it.

MS. CLONTS: Yes.

THE COURT: So we shouldn't -- you shouldn't apologize. There's no reason to.

But I did want to lay this out carefully so that perhaps --

MS. CLONTS: Uh-huh.

THE COURT: -- the transcript can be pointed to if there are other people, like yourself, who read things in the press and think, oh, well, maybe I can get paid now or, you know, why aren't payments being made now.

MS. CLONTS: Right.

THE COURT: If they reach out to the Debtors or the creditors committee, the Debtors can send them this

section of the transcript, at least to see how I analyzed it in your situation and if there's a similar, you know, they could then see it. So --

MS. CLONTS: Well, you made it very clear. I understand completely.

THE COURT: Yes. Okay. All right.

MS. CLONTS: Thank you so much.

THE COURT: And, of course, the -- the claims you've asserted are serious. I mean, I --

MS. CLONTS: Uh-huh.

THE COURT: -- am not dealing with the merits of those claims at all. They're serious claims and it's because of the seriousness of those claims and tens of thousands of others, that the parties have been working so hard in this case and by the parties, I mean, not just the Debtors --

MS. CLONTS: Right.

THE COURT: -- but the various committees to try to get a fair resolution for everybody.

MS. CLONTS: Right. I'm just so relieved this is over. So thank you again.

THE COURT: It's not over yet, I'm afraid. I'm just (indiscernible) --

MS. CLONTS: No, I mean -- I mean, for me, this part of the --

THE COURT: Oh, okay.

MS. CLONTS: -- this, I'm just glad this is over. Thank you.

THE COURT: Okay. Very well. Thank you.

MS. CLONTS: Bye-bye.

THE COURT: Okay. All right. I think the next matter on the calendar apropos the section that I was just talking about is the Debtors' request for a further extension of the time to object to dischargeability under Bankruptcy Rule 4007(c) and 1141(d).

I think that's the next matter. I don't know who was handling that from Debtors' side.

MR. MCCLAMMY: Yes, Your Honor. This is Jim McClammy. I believe that will be handled by Christopher Robertson for us.

THE COURT: Okay.

MR. ROBERTSON: Good afternoon, Your Honor. For the record, Christopher Robertson, Davis, Polk and Wardwell on behalf of the Debtors.

Can I be heard clearly in the Court?

THE COURT: Yes.

MR. ROBERTSON: Oh, thank you, Your Honor.

Your Honor, turning to agenda item number four, very briefly, Ms. Clonts also objects to entry of the fifth amended order extending time to object to dischargeability

of certain debts.

I understand this objection remains live notwithstanding the prior discussion.

THE COURT: But this is the only objection, I gather, too. There's been no other -- no other responses to the motion?

MR. ROBERTSON: That -- that is correct, Your Honor. I guess let's skip to the end.

We initially filed this -- the request to extend the determination deadline back on December 23rd, 2019. There have been no objections to the extension that any, you know, back then or any subsequent time until the present.

THE COURT: Okay. And have there been any changes to the proposed order?

MR. ROBERTSON: Just updating dates, Your Honor.

THE COURT: Right. But, I mean, no changes from that -- from those dates, those updated dates.

MR. ROBERTSON: No, Your Honor.

THE COURT: Okay. All right.

And I'm assuming no one has anything further to say on this motion?

All right. I will grant the motion for the same reasons that I've granted the prior extensions. I believe that, at this time, in these cases, it would be a sideshow and an undue burden on the governmental entities and any

other entity to have to face the deadline under Rule 4007 to seek a declaration of non-dischargeability under Section 523(a) to the extent that such a deadline applies and that it's appropriate to extend that deadline so the parties can see whether they can negotiate -- include negotiations on a plan that would deal with dischargeability issues among many others. Debtors have sought this relief themselves. They would be the ones benefitting from the imposition of the deadline. If they're prepared to extend it, and no one else has objected, other than Ms. Clonts, who I believe now understands that the motion really doesn't pertain to directly to her in any event.

So I will grant the motion and you can email that order to chambers.

MR. ROBERTSON: Thank you, Your Honor.

And, at this time, I would like to turn the podium back over to my colleague, Benjamin Kaminetzky.

THE COURT: Okay.

MS. KAMINETZKY: Your Honor, that brings us to -- this is Benjamin Kaminetzky again of Davis Polk. Good afternoon.

That bring us to the final items on the agenda, which is agenda items five, six, seven and eight.

I will be addressing those.

I'll turn things over to the media intervenors

shortly to address the specific objections that remain to the sealing and redactions proposed by the Debtors and the Sackler families.

But I thought it would be helpful before we jump into merits to give the Court a brief overview of what's been going on and kind of the numerous docket entries and what's actually still --

THE COURT: I think you may have hit -- I think you may have hit mute briefly, Mr. Kaminetzky.

MR. KAMINETZKY: Oh, I'm sorry. I -- what I propose to do is just to kind of update Your Honor on where we are and what's still at issue because I think, quite frankly, it'll make Your Honor happy as well as put everything in context.

So -- and then I'll hand it over to Ms. Townsend's representing the media parties to present any issues that remain.

So, as you know, back in September, the UCC filed two motions to compel the production of privileged documents from the Debtors and the members of the Sackler families.

Motions to which the Debtors and the UCC reached a negotiated resolution back in November.

Now, in connection with the UCC's privileges motions, over 550 documents totaling almost 14,000 pages were initially filed under seal or in case -- in the case of

briefing heavily redacted an immense amount of material by any measure and it's these materials that were the subject of the media intervenors motions.

As Your Honor may recall, many of those papers were initially filed under seal because they were, you know, constituted documents produced and marked confidential pursuant to the relevant protective orders entered in this case or referenced such materials,

At the time, no party had objected to this sealing until the media intervenors filed their motion in late November.

It should not be left unsaid that there's no small amount of irony to the fact that the parties are here today on the media intervenors' motion to unseal.

The vast majority of the materials that are subject to the motion were filed by the UCC and the Sacklers, not by the Debtors. And large swaths of it was the Debtors' business material. Hundreds, or multi hundred page presentations to the Debtors' board of directors containing detailed information about the Debtors' business and product offerings, quarterly reports to the board and the like.

Now why was this material filed? The answer is simple. The bulk of the exhibits filed by the UCC and the Sacklers are -- were intended to go to the merits of the

parties' underlying liability argument and were filed so that the parties could "tell their stories" through these two discovery motions and specifically through various arguments concerning the so-called crime fraud exception to the attorney-client privilege.

But it was the Debtors who were caught in the middle of the strategic decisions of the UCC and the Sacklers to litigate by their stories, by proxy, through these documents.

Now, in light of the fact that the hearing on the privileges motions was until Monday evening scheduled to proceed today, it was the Debtors who had to shoulder the burden of reviewing thousands upon thousands of pages of documents over the holidays, often page-by-page, and even line-by-line.

The Debtors were and remain quite supportive of the adjournment of the UCC's privileges motion and so the Sacklers, so it means that the parties will continue to dialogue.

But that doesn't change the fact, however, that the Debtors were forced to evaluate reams of information that we most assuredly, we, the Debtors, wouldn't have filed and we had to do this in an extremely compressed timetable demanded by the media parties.

With that out of the way, let me be crystal clear

about one thing. We agree, we fully agree, with the medial intervenors that transparency in judicial proceedings is of paramount importance not only to the parties and to the Court, but also to the press and the American public.

There is intense public interest in these specific Chapter 11 cases, understandably so. Indeed, the Debtors recognize that -- that as these cases enter their final stages hopefully the public's impressed interest in these proceedings is almost certainly to continue unabated.

And, for these reasons, the Debtors have been and continue to be committed to transparency in these cases, a commitment that I believe has been exemplified yet again by the Debtors' response to the media intervenors motions to unseal.

In short, over just a handful of weeks, a good portion of which fell over Christmas and New Years, the Debtors worked diligently to voluntarily unseal or authorize the unsealing of the vast overwhelming majority of the Debtors' information that was filed in connection with the UCC privileges motion. Again, mostly by parties other than the Debtors.

And I don't think it would be an unfair or an exaggeration in the slightest to say that the redactions that remain are targeted and exceedingly narrow, in many instances mere words or pages in exceedingly lengthy

documents.

Now as Ms. Town said -- Townsend informed the Court last night, the press and the parties have met and conferred extensively and narrowed their disputes to essentially two documents with redactions on a total of 42 pages. That's .3 percent, not three percent, .3 percent of the total pages filed in connection with the UCC's privileges motion. And there was a remaining issue as well.

Before turning the podium over to Ms. Townsend, let me dispense with the remaining issue, at least as to the debtors. I don't speak to the Sacklers.

As Ms. Townsend informed the Court last night, certain privilege log excerpts and related documents such as compilations of individuals appearing on privilege logs that were exchanged in discovery continued to remain under seal. The debtors believe that withholding to be entirely appropriate because, among other things, these materials contain much information that has little or no relevance to the case.

But, nevertheless, the debtors last night kept -- continued to consider the issue in good faith and can now inform the Court, and we informed Ms. Townsend earlier today, that the debtors do not now object to the unsealing of the privilege log information so long as there is a reasonable amount of time afforded to the parties to apply

redactions to any commercially sensitive information which might be theoretically in the subject lines or personally identifiable information, such as email addresses, which is consistent with the redactions that the debtors have applied without objection to the other materials.

So in light of that, and I believe we could get that done, Your Honor, in the next two weeks or so. I believe -- and then we could unseal that as well.

So I believe, Your Honor, we're down to literally two documents. And to be clear, it's not two documents entirely under seal, but sporadic redactions in only two documents that are still at issue, at least with respect to the media and to the debtors. And those are the documents that Ms. Townsend identified last night, which is Mark Pries Exhibit 137 as well as Leventhal Exhibit 123.

So, Your Honor, all that just to say is that we've substantially -- I guess that would be an understanding. We've narrowed the issues to certain redactions on two certain documents that I think are still at issue.

But I now turn the podium over to Ms. Townsend who we've been working with for the last several months and who has been, quite frankly, a pleasure to deal with.

THE COURT: Okay. But before we do that, I just want to -- I want to make sure the context for this is clear in one respect.

There was extensive discovery in these cases starting early in the cases between the creditors' committee and the ad hoc committee of non-consenting states on the one hand, and the debtors and the Sacklers on the other side, not really on the other hand, the debtors and the Sacklers.

As part of that discovery, as is quite common, customary, the parties, both the targets of the discovery and the parties seeking discovery, agreed to protective orders to be so ordered by me whereby they contemplated that certain information provided in the discovery would remain confidential and, in fact, at different levels of confidentiality. That's a common practice to enable discovery to proceed quickly without fights over what is produced in the first instance.

But those orders, as is my practice and the practice of the judges in the Southern District, contemplate that they are subject to review and motions to unseal such information by third parties, including, of course, the press.

The debtors have on the calendar today motions to seal documents under Section 107(b) of the Bankruptcy Code and there are sealing orders in the case. But, again, sealing orders under 107 also recognize, because they're often sought on shorten notice, again, to permit pleadings to be considered without fights over confidentiality by the

Court and other parties that have access to the full information. But they are subject, again, to the rights of others, including the press, to have the documents be unsealed.

In all of these instances, the ultimate burden on disclosure and more appropriately to prevent disclosure is on the party who wants to prevent disclosure.

So I appreciate all of the work that the parties have done to focus on what is properly now at this stage in these cases fit for disclosure to the public and it is clear to me that they've done it with a proper eye to the actual law, which would require disclosure of almost everything, and certainly the materials that have been disclosed, which is almost everything and that we're now discussing a far more constrained or limited set of items. In fact, we're now down, as far as the debtors are concerned, to two pieces of information.

This is all, of course, separate and apart from the privilege motion. And I agree with you, Mr. Kaminetzky, that the issue of the sealed documents is largely precipitated by both the committee and the ad hoc committee of nonconsenting states on the one hand and the Sacklers on the other to litigate, not in front of me, but in public eye, not a privilege motion, but to some extent the merits of their respective positions vis-à-vis each other.

So that's just an inescapable fact as to the state in which these cases were in when those documents were filed and everyone had to deal with that. There was a period, of course, where the parties were educating themselves and ultimately the issues here are issues to be decided by a court and not by public opinion. But I don't -- I certainly do not fault anyone for precipitating the disputes that were raised by the media intervenors.

So with that, I'm happy to hear from the intervenors' counsel, Ms. Townsend.

MS. TOWNSEND: Thank you, Your Honor. And for the record, Katie Townsend of the Reporters' Committee for Freedom of the Press on behalf of the media intervenors, Dow Jones & Company Inc., Boston Globe Media Partners, LLC and Reuters News & Media, Inc.

As Your Honor is aware and as you and Mr. Kaminetzky have already indicated, in December and January the parties in this matter met and conferred without participation from the media intervenors and ultimately publicly filed in unsealed redacted form the vast majority of the material that was previously sealed in its entirety and that was the subject of the media intervenors' motions to unseal.

We've since reviewed those publicly filed materials and we've met and conferred with the relevant

parties who filed timely objections to the motions to unseal.

At this point the media intervenors are in a position to voluntarily withdraw their pending motions to unseal without prejudice except as to 17 documents that we contend are still improperly sealed or redacted. And those documents, 17 documents, Your Honor, fall within two categories identified in our reply. And I'll address both of those categories briefly.

I'll start with two -- the two documents that Mr. Kaminetzky referenced, Exhibit 123 to the October 14th, 2020 Leventhal declaration, and Exhibit 137 to the November 18th, 2020 Preis declaration. Those documents have been redacted by the debtors purportedly on the ground that they contain confidential commercial information within the scope of Section 107(b).

Now, Your Honor, Section 107(a), as you know, makes any paper filed in a bankruptcy matter like this one a public record open to public inspection unless one of the express enumerated exceptions to that disclosure mandate applies. Those enumerated exceptions that are found in Section 107(b) or -- and 107(c) are narrowly construed. And as we explain in our briefing, the Second Circuit has interpreted commercial information in this context to be information that, if disclosed, would give an unfair

advantage to competitors by revealing details about the entity's commercial operations.

With respect to 123, Exhibit -- excuse me, Exhibit 123 to the Leventhal declaration and Exhibit 137 to the Preis declaration, the debtors assert the redactions are warranted, and as Your Honor has already indicated they therefore bear the burden of demonstrating that the redactions falls within the scope of an exception to Section 107, and that there's a compelling need to preclude public access.

It's the media intervenors' position that they have not met that burden with respect to these two documents. Exhibit 123 is a slide presentation dating back to mid-2016 and we understand that the information redacted from that presentation consists of internal projections about exclusivity periods for certain products. It's our understanding including opioid products.

Exhibit 137 is a 2017 memorandum from Purdue's president and CEO, Mr. Landau expressing his views about the challenges that have been facing the company. Large swats of that memorandum are -- have been redacted and remain under seal.

It's not at all clear and it's our position the debtors haven't demonstrated that unsealing these documents in their entirety, particularly given that they are at least

four or five years old at this point, would give an unfair advantage to any competitor of Purdue Pharma. And for that reason we argue that they should be unsealed.

With respect to the remaining 15 documents, and I understand that the debtor's position with respect to these has changed and so Mr. Kaminetzky didn't address them. Those are privileged logs --

THE COURT: Well, why don't we ask, do the Sacklers still oppose the unsealing of the privilege logs?

MR. JOSEPH: Your Honor, Gregory Joseph for the Raymond Sackler family. Yes, that is the one thing that we do oppose.

THE COURT: Okay. All right. I'm sorry to interrupt you, Ms. Townsend, but I wanted to make sure that you were arguing -- that you needed to argue on this point. But you do, so go ahead.

MS. TOWNSEND: Thank you, Your Honor.

With respect to those documents, so those are the privileged log materials, and they include excerpts of privilege logs that were filed as exhibits in connection with the UCC's privileges motion and those are currently sealed -- that are currently sealed in their entirety.

So setting aside the debtor is the only party to timely file an objection to the unsealing of the privilege log materials and the only party to offer I would say any

form of a substantive argument for doing so is the Raymond Sackler family party, and so I'll briefly respond. We've done so a bit in our reply, but I'll briefly respond to what I understand their arguments in favor of continued sealing of those materials, what I understand those arguments to be.

First, in the written objections, the Raymond Sackler family relies upon this argument that these materials are not evidence and, therefore, they can be sealed in their entirety. It appears to me that their position is that the materials here are not judicial records to which the common law presumption of public access applies or that the common law presumption is weaker here.

Now to be clear, we disagree that these are nonjudicial records. We've argued for their disclosure under the First Amendment as well as Section 107 and as we've pointed out --

THE COURT: Well --

MS. TOWNSEND: -- in our reply brief --

THE COURT: -- can I interrupt you on this point? I want to make sure I have -- I want to -- I'm sorry to interrupt you. I want to make sure I have the facts straight on this. These are not just privilege logs that were provided in discovery. They were actually filed on the docket as exhibits to various declarations in the privilege litigation, correct?

MS. TOWNSEND: That is correct, Your Honor. We do not seek --

THE COURT: Okay.

MS. TOWNSEND: Our motions do not seek any unfiled discovery material merely exchanged between the parties, only material that was filed.

THE COURT: Okay. Okay. So you can go ahead. I just wanted to make sure that was clear on the record.

MS. TOWNSEND: Thank you, Your Honor.

I think that my next point will sort of dovetail with precisely that. We do -- it is our position, and as we stated in our reply, that the interpretation of the Second Circuit's decision in Brown v Maxwell is not right, but I think that's a little bit besides the point because we have not moved to unseal these materials under the common law presumption of access because in bankruptcy proceedings the common law presumption has been displaced by Section 107.

And so the question here is not, you know, whether or not these are judicial records to which the common law presumption applies and whether that right has been overcome, but rather whether Section 107 applies and, if it does, which it clearly does because Section 107(a) doesn't just apply to any paper. And this is by plain language. It's expressed in plain language. It applies to any paper filed in a case under -- in -- under -- in bankruptcy.

So Section 107(a) plainly applies to these materials because they were filed in connection -- they were filed with the Court in this matter. The question then becomes does an exception apply.

Now with respect to the privileged materials as a whole, the Raymond Sackler family has not asserted that any specific exception would, under 107(b) or (c) applies to make those documents not properly unseal -- not -- doesn't require them to be unsealed. And quite frankly, Your Honor, I can't think of what possible argument that would be --

THE COURT: Well --

MS. TOWNSEND: -- if they are --

THE COURT: -- the only one I can really think of here is the one identified by Mr. Kaminetzky, which is personally identifying information might be in the privilege log for some reason.

And you don't have any problem with that being redacted, do you?

MS. TOWNSEND: No. And to be clear, I was referring to the documents as a whole. I think to the extent that there is -- that there are -- there is properly with -- that there can be properly redacted, you know, non-public personal identifying information, you know, we wouldn't challenge the redaction of material that actually does fall within an exception.

I think I would flag for Your Honor that it's my understanding that the Sackler family parties are -- have -- are taking the position, and I'll be frank. We didn't realize this until meet and confer discussions with their counsel that some of the material would also necessarily from their perspective need to be redacted because it includes counterparty information, so business and investment counterparty information.

And the basis that they've asserted for that, which they sort of dealt with as a separate category in their objections to our motions to unseal, is the Court's May 1st, 2020 ruling which brought that material within the scope of sort of a heightened level of protection under the protective order governing discovery.

And I think our position there would -- is sort of two-fold: One, the fact that there is a -- you know, the propriety of the scope of a protective order governing discovery, which is entered on a different standard, a good cause standard, is not really what's at issue here. What's at issue here is whether this material that was filed with the Court is accepted from disclosure under Section 107.

So I would respectfully to the Sackler family's counsel say that the existence of the protective order or the fact that this material is subject to a protective order that governs discovery is not relevant at this stage. In

fact, most of the material as you've indicated that has been unsealed to date was subject to a protective over governing its provision in discovery. And, again, those -- as Your Honor's already indicated, protective orders certainly serve different purposes in litigation than a sealing order does.

And you would -- we would contend that that material also does not fall within one of the express exceptions under Section 107. It's not confidential commercial information. It's not trade secret information. It's not research and development information, the specific categories that have been identified -- that are identified or expressly enumerated in Section 107(b).

And so for that reason, too, we would argue that the privilege log materials should be disclosed. To the extent that there are redactions, that that material that is properly within the subject of an exception to 107, that would be non-public TII, for example, that material could be redacted, but those redactions have not been made. The material has just been sealed in its entirety.

And I think, Your Honor, that really covers the waterfront with respect to the material that's -- the 17 documents that we -- that are still at issue. I would be happy to answer additional questions Your Honor has with respect to those materials.

THE COURT: Well, I have a question for the

parties.

We have been looking for a complete version, both redacted and unredacted, of Exhibit 123 to the Leventhal declaration and Exhibit 137 to the Preis declaration and don't have them. I would like someone to email those to chambers immediately so I can look at them, both the redacted and unredacted versions.

MR. HURLEY: Your Honor, this is Mitch Hurley with Akin Gump on behalf of the official committee. We can certainly take care of sending the Preis exhibit you referenced. And whatever version of the Leventhal exhibit we have we will send as well.

THE COURT: Okay. And, again, I need both the complete and the redacted ones.

MR. KAMINETZKY: Well, Your Honor, we could -- this is Ben Kaminetzky. I'll have someone do that from my office right away --

THE COURT: Okay.

MR. KAMINETZKY: -- both of them --

THE COURT: Thank you.

MR. KAMINETZKY: -- together.

THE COURT: Okay.

MR. KAMINETZKY: Your Honor, would you like to --

THE COURT: All right.

MR. KAMINETZKY: This is -- I'm sorry. Would you

like to deal with the privilege log issue with --

THE COURT: Yeah.

MR. KAMINETZKY: -- the Sacklers or --

THE COURT: We should deal with -- why don't we deal with the privilege logs while I'm waiting to get those other two exhibits.

MR. KAMINETZKY: Okay. So I will --

THE COURT: So I take that -- I think that means Mr. Joseph?

MR. JOSEPH: Yes, Your Honor. May it please the Court, thank you.

Your Honor, the only issue concerning the privilege logs that I would like to raise is, first, it's only relevant to the general challenges motion which has been adjourned at the request of the UCC to see whether it can be resolved. As -- and I'll come in a moment to the fact that it has been overwhelmingly resolved so far.

But this motion, the general challenges motion, hasn't been heard, may never be heard. And if it is heard, we're talking about a series of entries that are not evidence, that are not evidential, that are tools that are used for the Court to help identify what the nature of the claim is and how to resolve the evidence issue. Ninety percent of the entries being sought are irrelevant to any decision the Court would ever render on the general

challenges motion. That's because during the briefing process, the parties have streamlined the dispute so that almost 90 percent of the entries that the media is seeking will never be relevant, will never be used by the Court to decide the motion.

Hurley Exhibit B, which was the privilege log entry exhibit filed with the opening briefs contains over 12,500 entries. Preis Exhibit B, which was filed on reply, cut that number to 1,661 entries. So that eliminated approximately 90 percent of the initial privilege log entries from potentially even being relevant to Your Honor's decision and we've cut that number down. By making another production it's still a number in excess of 1,500, and this process is continuing. That was the reason why the UCC sought to defer the motion for which these are relevant.

And we suggest, Your Honor, that 107 under the Second Circuit's opinion in Orion codifies the common law right of access and it specifically says the right is not absolute. The Court has to grant the motion to protect if it's under 107(b) in there particular categories, but it has discretion. And the Supreme Court says that when a statute covers an issue that's previously governed by the common law, the statutes interpreted consistently with the common law with the presumption that congress intended to read -- retain the substance of the common law.

So if we look at what the law is in this area, the leading decision is the decision by the Second Circuit in Brown. And the Court said that the weight to be given a presumption of access for discovery materials depends on the role the material plays in the exercise of judicial power and the resulting value of the information to people, the media and the public monitoring the federal courts.

And the reason it says that is it distinguishes summary judgment materials. It says those are automatically reviewable. That's going to lead to an adjudication on the merits. That's an act of government that has to be reviewable. But a discovery issue is not an adjudication on the merits.

And here we know that if this motion is decided, it's not going to be used -- Your Honor will not be using at least 90 percent of the materials which the media is seeking. Brown says that you look at the role the material plays in the exercise of judicial power. Well, we know even for the ten percent that remains it's not comparable to summary judgment evidence. It's not any evidence. It's not something you would decide in adjudicating a substantive motion.

Public access isn't going to facilitate any meaningful public monitoring of the Court's function and its exercise of its function. All the relevant entries are

quoted in the briefs. And there is prejudice in unsealing these materials. They do contain the names of investment counterparties which Your Honor ruled on May 1 would cause harm to the estate because it would cause harm to the Sacklers in connection with their ability to fund any settlement. They contain personally identifying information. All of that would need to be redacted.

But there's another prejudice here, too. It's no secret that our clients have been vilified in the media. They're harassed and threatened on social media. So publishing thousands of irrelevant entries listing communications with others over a 25-year period will permit those others to be harassed and threatened, and there is no legitimate need for public access to non-evidence.

It's also -- if you think, Your Honor, about this for a moment. Suppose they had made this motion initially when the Hurley Exhibit B was the standard. Then there would have been 12,500 entries that were potentially relevant. Now there are about 1,500. The parties are speaking to see whether they can resolve this general challenges motion altogether and render them entirely irrelevant. If that happens, then this whole issue as to which these non-evidential privilege log entries were filed would be moot.

I would suggest, Your Honor, that at a minimum

this motion is premature because if the parties succeed in resolving the general challenges motion, then none of these materials are ever going to be relevant to a judicial decision. The issue is going to be moot. Under the common law, Judge Preska (ph) and Magistrate Judge Ellis have ruled documents submitted on a motion that is moot are not judicial documents under the common law.

So we would ask the Court if it's not inclined to deny this motion, to adjourn it to the date which is set for the general challenges motion if that's not resolved. And we would also know at that point which, if any, entries might actually be considered by the Court and be relevant to the Court in rendering a decision.

Thank you, Your Honor.

THE COURT: The issue as to the counterparties, are those current counterparties or past counterparties?

MR. JOSEPH: We are concerned about current counterparties. That is what Your Honor permitted us to redact. But we'll have to --

THE COURT: Would --

MR. JOSEPH: -- go through, you know, thousands --

THE COURT: -- that be -- but as far as the privilege logs are concerned, is that -- I mean, are there current counterparties on the privilege logs who are engaged in business not as advisors, but in business with your

clients?

MR. JOSEPH: Your Honor, because there were 20,000 entries on those logs, I can't answer that. I can tell you we -- on the initial set of logs. We will have to go through and identify. But we have provided who's who of people on logs which include counter -- investment counterparties. But we would have to see whether they're within either the 12,500 or the 1,661 or whatever the ultimate number of relevant entries is, depending on Your Honor's decision.

THE COURT: But that hasn't been done yet I gather?

MR. JOSEPH: We did -- correct. We did not make that review because we don't have Your Honor's permission to do it. This is now an application to unseal and we would have to get permission to be able to continue to do that just like the personally identifying information, which was also ordered on May 1.

THE COURT: All right. Have you given me the cases on mootness?

MR. JOSEPH: No, Your Honor, we have not.

THE COURT: Okay. So what are those cites?

MR. JOSEPH: Yes. International Equity Investment Inc. versus Opportunity Equity Partners, 2010 Westlaw 779314. That's Magistrate Judge Elli's opinion holding that

the motion became moot when the parties entered a stipulation that resolved the issue raised by the motion. Thus the Court didn't use the documents to make a substantive determination because of the targeted doc -- because targeted documents don't fall within the category of judicial documents. There's no presumptive right of access.

The second case is Giuffre, G-I-U-F-F-R-E, versus Maxwell, 2020 Westlaw 133570, and that's Judge Preska's decision from January 30th of 2020 in which she holds that all disputes regarding the underlying merits of the action have been rendered moot by the settlement. There's, thus, no live controversy to which a judicial power can extend. There was never and now never can be a judicial decision-making process that would trigger the public's right to access the undecided motions and the documents relevant to them.

And the Court, Judge Preska, does say in a footnote that the Court will have to consider the issue of a motion that's been submitted and hasn't been decided. But this is a discovery motion. This is not a summary judgment motion which as a matter of law means that every document filed is entitled public access. Lougash (ph) says that and Brown says that. This is a discovery motion and we're dealing with devices or tools, not evidence.

Thank you.

THE COURT: Okay.

MS. TOWNSEND: Your Honor, this is Katie Townsend for the media intervenors. May I respond briefly to the argument that has been made by Mr. Joseph?

THE COURT: Sure.

MS. TOWNSEND: Thank you. And I would be happy, Your Honor, as well, to the extent that Your Honor wants to take this under submission, we could certainly provide additional briefing to the Court on these issues. I note that the two cases that have been cited by Mr. Joseph, neither of those are bankruptcy cases. And I -- we would agree as the Second Circuit concluded in Orion that Section 107(a)'s disclosure requirement is not absolute; that it is qualified, but it is qualified expressly, solely by the exceptions that are set forth in Section 107. And, again, Section 107(a)'s language that indicates that it applies to any paper filed I think would be controlling in this case.

I would also note that the Giuffre Maxwell case, Judge Preska's decision, cited -- that was cited by Mr. Joseph is, in fact, is the same case on remand in the Brown v Maxwell case that was cited by the Sackler family parties in their briefing and again indicates to the contrary that material that is cited, that is filed in connection with a discovery motion, it's not as though the common law presumption does not apply to those materials. I think the

Second Circuit in Brown v Maxwell make clear that even if the presumption is weaker, it certainly still applies. And, again, I would note that we think that the presumption has been displaced in this context by Section 107 of the Bankruptcy Code.

I would also just want -- like to take issue, I think, with the notion that there's a sort of temporal, you know, sort of a time period when material could be accessible to the public and that that can change depending on actions taken by the parties. So taken to its logical conclusion, I think the arguments that Mr. Joseph is making is that if a party were to file a motion for summary judgment under seal, that the public would have a right of access to that if it moved to unseal.

But if the parties then reached a settlement agreement and withdrew those motions for summary judgments, that the right of access would sort of evaporate into thin air. And I think that that's just contrary to existing law that makes very clear that the right of access both under the common law and the First Amendment where it applies is a contemporaneous right of access. The Supreme Court in Nebraska Press against Stewart, the cite for that is 423 US 13 -- 1327. It's a 1975 decision that makes clear that sort of each day that access is delayed or denied to the public constitutes a separate and cognizable infringement on the

First Amendment right of access.

And other lower courts agree, the Fourth Circuit in Doe against Public Citizens, the cite for that is 749 F.3rd 246. That's a 2014 decision from the Fourth Circuit make clear that when the public and press have a right of access to court documents, that right is contemporaneous. In other words, the right of access attaches.

And Section 107(a), again, I think it displaces the common law right, but it certainly applies on its face to any paper filed. It applies as soon as that material is filed with the Court. There's no sort of temporal requirement that the Court rule on a motion or dispose of a motion, and that includes a motion for summary judgment. It includes any kind of motion filed with the Court in order for the public's right of -- to have a right of access to that material.

So I think fundamentally that argument is simply mis-- the way that the public's right of access operates. It is intended to allow members of the press and public to observe the progress of proceedings. And that certainly can mean that motions for summary judgment are filed. The public sees those motions for summary judgments, and then a settlement is reached. It can mean that a motion to compel is filed and that the party ultimately withdraws that or narrows the scope of issues -- of the issues to be presented

by that motion to compel. That happens routinely. It doesn't alter the public's right of access to that material.

And I think finally, Your Honor, I would note that again with respect to the business and investment counterparty information, there simply is no exception under Section 107 that would apply to that type information. If you look at the May 1st, 2020 hearing that Mr. Joseph referenced, he argued at that hearing that the basis for -- and, again, we weren't talking about, we weren't talking about sealing material filed with the Court at that point. We were talking about how material exchanged between the parties, the discovery process would be handled by those parties.

He contended that to -- that for certain counterparties to be publicly associated with the Sackler family would cause them to, you know, pull away or terminate relationships or potentially end relationships with the family because of that association. That is not a trade secret information. That is not research and development information. That is not confidential commercial information that its disclose would harm an entity's business by giving an unfair advantage to its competitors. It's just simply not the type of information that the exceptions to 107 were intended or the purpose of Section 107 -- the exceptions to 107 were intended to protect.

And so I think I would just finally say, Your Honor, that with respect to PII, and I think the parties would -- and the redaction of PII and the privilege log materials, you know, I think the parties would agree with me that the media intervenors have not objected to that in a number of the vast majority of the documents that have been filed. Therefore, to the extent the Court would like to proceed to the debtor's request for a reasonable period of time for the parties to review those materials to redact PII's, which is non-public email addresses, things of that nature, the media intervenors would not object to that as a way of moving forward with respect to these materials.

And with that, Your Honor, again, we're happy if you would prefer -- if you would like or need additional briefing on any of the legal issues, we're happy to provide that.

THE COURT: Okay. Let me go back to Mr. Joseph.

I obviously reviewed the Orion Pictures case before this hearing. I've looked at it again. I don't see a recognition by the Circuit in that case that there are any exceptions in 107(a) other than those in 107(b). Am I missing something?

MR. JOSEPH: Well, Your Honor, on page 27 -- I'm just going to read two sentences if I may.

THE COURT: Right.

MR. JOSEPH: Although the right of public access to court records is firmly entrenched and well supported by policy and practical considerations, a right is not absolute. There's a cite to Colliers. And then it says, in limited circumstances the Court must deny access to judicial documents generally where open inspection may be used as a vehicle for improper purposes. Generally, not exclusively. That's not limited to the exceptions in 107(b).

Here, the entire purpose on May 1 of not permitting investment counterparty information to go even to the parties int his case was to avoid a leak to the press. That doesn't change because the press now comes to seek it directly. Counsel --

THE COURT: But --

MR. JOSEPH: -- Ms. Townsend --

THE COURT: But on the other hand --

MR. JOSEPH: I'm sorry, Your Honor.

THE COURT: But congress in 107(a) says, except as provided in Subsections (b) and (c) a paper filed in a case under this title in the dockets of a Bankruptcy Court are public records and open to examination.

MR. JOSEPH: Your Honor, I think that there is a fair argument that a privilege log that is sent as a tool to permit the Court to identify documents isn't a paper that's contemplated by that. But I'm not going to say that. I can

rely on Orion which gives the Court discretion. There is no --

THE COURT: Well --

MR. JOSEPH: -- proper purpose in getting --

THE COURT: -- the Court only considered 107(b). It didn't consider any other basis for sealing the documents.

MR. JOSEPH: That's true. But that is two paragraphs down when it actually goes to the statutory exception. That's subsequent to its recognition of a discretionary exception. And that --

THE COURT: Well --

MR. JOSEPH: -- is where the inspection may be used as a vehicle for improper --

THE COURT: -- do you have any case that provides a discretionary exception that's not within the ambit of 107(b) in a bankruptcy case?

MR. JOSEPH: Other than Orion I do not, Your Honor.

THE COURT: Okay. And I read that language in Orion as just sort of an introductory discussion of the topic of sealing and not a construction of 107(a). I mean, it -- I don't see how a judge-made rule, which is what I think we're talking about in the Brown case and other cases, can override a statute.

MR. JOSEPH: Your Honor, the Orion case cites the Nixon decision citing a Rhode Island case saying in this hypo -- in this example, a court can ensure its records are not used to promote public scandal. I mean, it does --

THE COURT: Well, but that -- if that's --

MR. JOSEPH: -- use its discretion in --

THE COURT: I mean, that's a separate provision in 107(b). It protects a person with respect to scandals or defamatory matter.

MR. JOSEPH: I do understand that, Your Honor. I do understand that. But --

THE COURT: I mean, I -- look, I see the language you're referring to. Court's do sometimes like to explain why there are exceptions to something that's a very important public policy, i.e. the First Amendment or common law right to access. And the heading of that section is common law right to access, but it's -- I guess I view that as just an introduction to what the Court actually had to decide which is what exception is there to 107(a). And it only applied 107(b). It didn't look at anything else.

MR. JOSEPH: In that case, Your Honor, I cannot disagree. But I think it's relevant that the discussion of 107(b) comes up in connection with the common law right of access because the Supreme Court tells us that when a statute covers an issue that was governed by the common law,

it should be interpreted consistently. There have to be some limits, which is why the Court talks about improper purposes.

And common law --

THE COURT: Well, I guess -- although, I mean, the statute I think arguably isn't a major change from common law because (b) largely covers common law provisions.

MR. JOSEPH: But common law does go --

THE COURT: The common law concept. In one way it makes it broader with the absolute protection for trade secrets or confidential research development or commercial information. And then it has the protection against scandalous and defamatory matter.

What it doesn't include, what -- and what is included in Rule 12(f) is irrelevant matter. But I think that's a -- you know, that -- that's a motion to strike something in a pleading, not a --

MR. JOSEPH: Well --

THE COURT: -- an access to pleadings in the first place.

MR. JOSEPH: -- the Court has -- I mean, the Court has access -- the Second Circuit has applied 12(f) beyond -- in this -- beyond just filings of pleadings in the case.

But, Your Honor, on that reading, which is Ms. Townsend's reading that 107 applies to any paper filed, then

in a case like this it could be used as a vehicle to put in anything for ulterior reasons that -- and then ask the press to come and get it.

THE COURT: No, but if there are --

MR. JOSEPH: I mean --

THE COURT: But, again, if there ulterior reasons, then (b)(2) would protect the person.

MR. JOSEPH: Well, but I'm talking about non-scandalous and defamatory. I mean, it could be all sorts of things that disclose information just to harm, which is what investment counterparty information does.

THE COURT: Well --

MR. JOSEPH: Disclosing information --

THE COURT: -- but we don't -- I guess that's a separate point that I wanted to raise.

One of the key points from the Brown decision, Giuffre v Brown or Brown v Giuffre, and then Brown v Maxwell is that the Court needs to engage in a particularized analysis. I don't know what the level of harm here is. You know, it's -- it -- that analysis hasn't been done by the party that's looking to have these remain sealed. I don't know if there's a threat to safety, for example. You know, I would think that the most persuasive set of facts for your argument, that there's got to be something beyond 107(b) to prevent public access to something filed in a bankruptcy

case, or (c) which deals with personally identifiable information, would go to the safety of a person.

And yet I don't know whether there's any -- I don't know whether any particular one of these has that issue. It's not been -- in other words, there's a blanket sealing here. So it would seem to me that pending that review, the privilege logs should be disclosed with the exception of what's covered by 107(c) personal identifiers, and however without prejudice to the making of a motion, which I would decide on an actual factual record as to whether there is some level of information that is protected here either under 107(b)(1) or (2) or under some common law theory.

But I'm just -- we're just hypothesizing right now. We really don't know what we're talking about.

MR. JOSEPH: But, Your Honor, if I may --

THE COURT: So it seems to me that the burden on this point should be -- since you're going to be reviewing the documents anyway, would be to raise it in that context as opposed to in a general context.

MR. JOSEPH: Your Honor, counsel for the press has suggested briefing. I've been provided by one of my colleagues with a Bankruptcy Court case from the District of Delaware that does contemplate that a Court retains authority to seal documents when justice so requires.

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THE COURT: Well, that -- that's fine. But I guess my issue is I would like to know when justice so requires beyond just the proposition, which is not on the record before me at this point.

MS. MONAGHAN: Your Honor, this is Maura Monaghan from Debevoise & Plimpton. I represent the Mortimer Sackler branch of the Sackler family.

THE COURT: Right.

MS. MONAGHAN: I just wanted to raise one complication to perhaps discuss about process for making that showing.

Your Honor raised the concern about safety which is a real concern and does, we think, require redaction of certain names. The trouble is if we file something making that motion on the docket, that itself becomes a filing and we have concerns about copycats. I don't know if Your Honor has any suggestion for a procedure to address that concern. But one of the cleft sticks (sic) we find ourselves in is we don't necessarily want to publicize the threats against our clients and, you know, where those threats took place or what types of threats they were.

THE COURT: Well, has this been discussed with the media parties at all?

MS. MONAGHAN: I don't believe it's been up for

discussion until now. We could have that conversation --

THE COURT: All right.

MS. MONAGHAN: -- with Ms. Townsend.

THE COURT: Look, I want to step back for a second.

As everyone on this -- every lawyer on this call knows, I really like the briefing to be in advance because I rule from the bench and because these matters need to move ahead and don't warrant delay with a written opinion.

Normally I would be quite cross with parties that haven't cited me any of the applicable case law, in fact, any of the actual reasons for denial of the motion except for the reason that was asserted based on the information being irrelevant, which is actually something that I was able to research and it was actually well dealt with in the context of 12(h) -- I'm sorry -- 12(h) -- 12(f) of the federal rules by another District Court, a later District Court.

So on the other hand, this motion as it was originally styled and pursued covered an enormously greater amount and range of documents, and the parties have been working hard on narrowing those down and saving the Court from a lot of work on a lot of other issues.

I still don't have copies of the other two documents that I actually need to focus on to see if

107(b)(1) applies. So I guess all things considered rather than simply saying, no, I'm not going to take any more, you had your chance and that's it. It probably makes sense for the parties to discuss these two documents as well as give me those documents and I guess provide me at least with the case law on this in simultaneous briefs.

I have to say that generally speaking it's hard to see how privilege logs really would lead to anything material in a newspaper story. But that's not ultimately the point except to say that it's probably worth adjourning this so that I can get those briefs and decide it at the next omnibus hearing with the actual pleadings -- I'm sorry -- the actual court filings that are sought to be redacted and a further description of what the concern is in real terms that the Sacklers have with regard to the privilege logs.

In that context, I would expect the media representatives to act responsibly about some means to protect people from public disclosures, to threats on their life or their safety. That's not something that any reputable media outlet and certainly the media companies that are part of Ms. Townsend's client group are responsible media companies.

So I am assuming you would -- you people would be able to work something out on that point so that I could

have a proper record before me.

MS. TOWNSEND: Your Honor, this is Katie Townsend on behalf of the media intervenors. Just to be clear, this is the first throughout this entire process that we have heard anyone raise any concern with respect to any of the documents that were at issue here, about any --

THE COURT: Well, I understand, Ms. Townsend. And --

MS. TOWNSEND: Okay.

THE COURT: -- frankly, I came into this hearing about 99 percent sure that I would grant your motion as to the privilege logs except for personally identifying information covered by 107(c).

But it could be met by the Sacklers' own motion to seal under 107(c) even if I directed these to be unsealed upon a proper review by them, which is really all that I'm asking to have happen at this point. And so, you know, I think that's just where we are.

And I have it hard to belief, put it differently, I find it hard to believe that any press account related to this case generally would be unduly delayed because privilege logs weren't provided, given everything else that's been provided as far as claims and defenses asserted by the parties that go right to the merits.

MS. TOWNSEND: Your Honor, I don't think --

MR. LEES: Your Honor, this is --

MS. TOWNSEND: Oh, I apologize. Go ahead.

MR. LEES: Your Honor, this is Alex Lees at Milbank for the Raymond Sackler family. I'm co-counsel to Mr. Joseph. I just wanted to make one observation of the facts so that the record is clear, which is that our position with respect to the right to redact counterparty names in the public versions of documents that was filed was made in our statement in response to the original motion to unseal filed by the press intervenors.

THE COURT: Yeah. No, I know --

MR. LEES: And --

THE COURT: -- it was. But it wasn't particularized. I didn't know who those people were, you know, what it was, you know. I mean, it -- whether they're current, whether they're past. It's just sort of a general statement. So it's fine as far as it goes, but it's just -- you know, if -- as far as meeting a burden, it's just not there.

MR. LEES: Understood, Your Honor. We had intended to rely on the previous colloquy and ruling in the court. But I understand the point and we will address it in a more particularized way given the opportunity for further briefing.

Thank you.

THE COURT: Okay. All right.

Now, Ms. Townsend, you were going to say something, too.

MS. TOWNSEND: Your Honor, I was just going to say that I understand the predicament that you're in. I mean, I think we came into this -- the media intervenors came into this hearing very much of the view that the parties had not met their burden to demonstrate that this material to remain sealed precisely because they have not made a particularized showing.

THE COURT: Right.

MS. TOWNSEND: I think that to the Court -- we do not object to the Court giving the parties a reasonable opportunity to -- to giving the parties, including the media intervenors an opportunity to submit additional simultaneous briefing, and provided that the party -- to the extent that the parties are arguing that portions of these documents should remain sealed, that they do, in fact, make that particularized showing for the Court.

I recognize we could talk a little bit more about process. I am happy to defer to whatever Your Honor thinks is the right process, but I want it to be clear that to the extent the Court needs additional information and believes additional information be submitted for Your Honor to rule, we don't object to that approach.

THE COURT: Okay.

MR. HURLEY: Your Honor, it's Mitch Hurley.

THE COURT: Okay. I did just get -- I did just an email from the debtor's counsel that, I guess, has these documents attached.

MR. KAMINETZKY: Your Honor, we tried initially to just send it by email and it got bounced several times by the Court because of its size. So we had to set up this client link or whatever it's called. So now Your Honor should have it in a form.

But I don't -- I don't know if Your Honor wants to deal with this today because what we sent Your Honor is --

THE COURT: No. I will review it. I may just give the parties my ruling separately on this one. I mean, again, my chambers practice on motions to seal is to insist that I get the unredacted document and the redacted document. I look at them and I decide whether I think it's covered by 107 or not, 107(b) or not.

And I have the briefing on this. I have your arguments. I think I have the case law on it. We're just talking about 107(b) as far as Exhibits 137 and 123 are concerned. So I don't need any more briefing on that. And I may just rule on that before the next hearing.

MR. KAMINETZKY: That's fine, Your Honor. Let me just -- if you could just allow me to explain. What we sent

Your Honor was what we called transparent redactions in that you have the whole document, but we put --

THE COURT: Yeah.

MR. KAMINETZKY: -- red boxes around --

THE COURT: The redline.

MR. KAMINETZKY: Right.

THE COURT: The redline. I see that.

MR. KAMINETZKY: So that you know what it is that -- and we think that this falls -- everything Your Honor said. This is just a 107(b) and --

THE COURT: Right.

MR. KAMINETZKY: -- we think Mr. Lowne in the declaration that we submitted in connection with our papers, this one declaration that he explains what the basis is under 107(b) for the proposed few redactions on those two documents. And as far as the debtor is concerned, we'll -- with respect to the privilege log we'll do what we said we would do. We would just -- we would redact PII and, you know, any personal identifying information like email addresses, and then just take a quick look to make sure there's nothing -- no 107(b) information in the subject line, and then just give us a week or two and we'll unseal that.

THE COURT: Okay. Well, as far as that's concerned, I think that -- I don't' think you're going to

have to have armies of people on it. I can't imagine a privilege log likely to have sensitive commercial information on it. But I understand you want to eyeball it for sure.

Okay. So I will adjourn the hearing on this motion on --

MR. HURLEY: Judge, may I --

THE COURT: There was just an update motion. So it's really one motion, although there are two motions on the calendar from the media parties to the next omnibus hearing.

It's unlikely that I will take additional oral argument. The parties are both represented by -- are all represented by capable counsel. And I will -- I know Ms. Townsend said supplemental briefing. I think actually it's incumbent upon the Sackler parties to submit their brief first and after consulting with the media parties about the safety issue, if that's still an issue and hopefully resolving that, also including for me, you know, specific documents, clean and redacted, that are at issue. I have a feeling that most of the entries won't be. And so I want to have the ones identified that are at issue specifically.

And then a reply brief can be filed by the media parties three days before the hearing.

DR. JOSHI: Your Honor --

MR. HURLEY: Your Honor, does that --

DR. JOSHI: Your Honor, I was granted by the Court in December a moment to speak about --

THE COURT: No. No. I want to continue on this matter. Does anyone have any more matters on the media motions?

MR. HURLEY: Your Honor, it's Mitch Hurley. Can I just make one point of clarification very briefly?

THE COURT: Sure.

MR. HURLEY: Okay. Mitch Hurley for the committee. The official committee takes no position on the unsealing of the privilege logs, Your Honor. We don't advocate for it. We don't oppose it.

I do want to be clear, though, that the exhibits we're talking about actually are not exclusively related to the log challenges motion. There are entries on those exhibits that we have identified as samples in connection with the exceptions motion as well.

I just wanted to make that clear for the record.

Thank you.

THE COURT: Well, when you say the exceptions motion -- I'm sorry. What two motions are you referring to?

MR. HURLEY: Sure. So the committee filed two motions to compel. One is referred to as the log challenges motion, which was a motion made -- based on ordinary

challenges to a privilege log. Third parties are present, you know, non-lawyers waiver, that sort of thing.

And then there's the other motion which is the exceptions motion based on the crime fraud and at issue exceptions --

THE COURT: Right. But they both go to --

MR. HURLEY: -- of these --

THE COURT: -- they both go to privilege issues.

MR. HURLEY: Correct.

THE COURT: And that's how I'm -- that's how I'm treating this even though there are two separate motions. They're both dealing with the admissibility or the -- I'm sorry, the require -- the requirement to produce --

MR. HURLEY: Correct.

THE COURT: -- what are asserted to be privilege documents.

MR. HURLEY: Correct. I'm just responding to Mr. Joseph had suggested that if we're able to resolve the log challenges motion --

THE COURT: Well, you would have to -- yeah. I understand, although again --

MR. HURLEY: Yeah.

THE COURT: -- that assumes that I think that there are limits and that those limits are within the facts beyond what is set forth in 107(b) to 107(a) of the

Bankruptcy Code.

MR. HURLEY: Understood.

THE COURT: So there you are.

I guess -- so I didn't set a date for the brief from the Sacklers or briefs from the two sides of the Sackler family. I would say when is -- can someone remind me when the February omnibus hearing is?

MR. JOSEPH: I believe it's February 17th, Your Honor.

THE COURT: All right. So the 14th would be the reply. I guess the 7th would be the date for the brief.

MR. JOSEPH: Thank you, Your Honor.

THE COURT: Okay. Or briefs if the two different, Side A and Side B want to file separate briefs.

Okay. Now someone was speaking up about some other matter. I think that is the end of today's calendar. But I think someone --

DR. JOSHI: Yes.

THE COURT: -- was raising his hand to speak.

DR. JOSHI: Yeah. Judge Drain, thank you for a time. My name is Dr. Jay Joshi. I filed amicus on behalf of my patients who are represented in some of the cases that have been aggregated.

I understand that we're turning towards the end so I will make this quick.

First of all, I would like --

THE COURT: No. No. Mr. Joshi, no, don't -- wait. I'm going to interrupt you, Doctor.

I thought that I had explained this to you in an email. I'm going to explain it now again, and I apologize if it wasn't clear before.

When one wants to file an amicus pleading, two things have to apply. First, there has to be a motion for leave to file it; and, second, it has to apply; that is, the underlying pleading has to apply to something that is before the Court to decide.

If the Court grants permission to file the amicus pleading, it will consider it only in that context, i.e. it is part of the record for the matter that the Court has before it to decide. There is nothing before me on today's calendar that pertains to your amicus pleading. There is no motion to which that pleading would apply.

So somehow you've gotten the impression that you can pursue this matter today. That's simply not the case. An amicus pleading is, as the name suggests, a pleading filed by someone who as a friend to the Court wants to elucidate and illuminate further than the parties have the issues before the Court on a particular matter that the Court has to decide. I don't have anything before me relating to the document that you have filed.

DR. JOSHI: Okay. I understand, sir. I can probably send you emails that refute that, but out of respect for your time, sir, and respect for everybody else we can maybe take this offline, otherwise I can continue discussion. But I respect for the Court that --

THE COURT: No. There's nothing to discuss offline, sir. The calendar today had five matters on it, some of which had subparts. None of them pertained to the document that you have filed. Sometime in the future there may be an issue before me to decide that does pertain to it, at which point you should file a motion seeking leave for consideration of an amicus brief. But there's nothing before me today.

And I don't want there to be any more confusion on it. There's no more reason to talk to anyone in chambers about it, to anyone in the clerk's office or to me about it. I just want to be clear on that. Okay.

Again, courts decide specific things that are brought before them on a proper record with proper briefing and proper notice. They're not general forums for expressions of opinion. Those are, you know, the Boston Globe or Dow Jones or Reuters or a law review article. But that's not the Court's function.

So I think that does close the agenda for today's hearings. And I'll see you all at the omnibus date

or, actually, probably just hear you all at the omnibus date in February.

Okay. Anything else from anyone?

All right. Very well. Thank you, all.

MR. JOSEPH: Thank you, Your Honor.

MR. KAMINETZKY: Thank you.

(Whereupon these proceedings were concluded at 1:20 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

We, William J. Garling, Pamela A. Skaw, and Sherri L. Breach, certify that the foregoing transcript is a true and accurate record of the proceedings.

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William J. Garling,

AAERT Certified Electronic Transcriber

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Pamela A. Skaw

AAERT Certified Electronic Transcriber

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Sherri L. Breach

AAERT Certified Electronic Transcriber

Date: January 22, 2021

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